

AMENDED IN ASSEMBLY APRIL 19, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 757

Introduced by Assembly Member Chan

February 18, 2005

An act to amend Section 511.3 of, and to amend, repeal, and add Section 511.1 of, the Business and Professions Code, to amend Section 1375.7 of, and to amend, repeal, and add Section 1395.6 of, the Health and Safety Code, to amend Section 10178.4 of, and to amend, repeal, and add Section 10178.3 of, the Insurance Code, and to add Section 4609.5 to, and to amend, repeal, and add Section 4609 of, the Labor Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 757, as amended, Chan. Health care providers: contracts.

Existing law, *the Knox-Keene Health Care Service Plan Act of 1974, the willful violation of which is a crime*, provides for the regulation of health care service plans by the Department of Managed Health Care, ~~and. Existing law provides for the regulation of disability insurers by the Insurance Commissioner. Existing law, with respect to contracts providing for the payment of preferred reimbursement rates by payors or health care services rendered by health care providers, imposes certain disclosure and related requirements on contracting agents, as defined, who sell, lease, assign, transfer, or convey a list of contracting providers and their contracted preferred reimbursement rates to other payors or contracting agents.~~

~~This bill would make specified findings and declarations with regard to silent preferred provider organizations and the resulting unfair practices and harm to patients. The bill would declare the intent~~

~~of the Legislature to enact legislation that would provide more equity in contracting in order to promote patient care.~~

Existing law requires a contracting agent, as defined, that sells, leases, assigns, transfers, or conveys a list of contracted health care providers and their contracted reimbursement rates to a payors to make specified disclosures to providers and to allow providers to decline to be on the list. Existing law requires the payor to provide an explanation of benefits or explanation of review, and, upon the written request of a provider who has received a claim payment, to make a demonstration that it is entitled to pay the contracted rate.

This bill would, effective July 1, 2006, prohibit a contracting agent from selling, leasing, assigning, transferring, or conveying its list of contracting health providers and their contracted rates unless certain conditions are met, including having a direct contract with the provider that meets specified criteria, obtaining affirmative written consent from the provider, and making certain disclosures. The bill would also, effective July 1, 2006, revise the requirements that a payor claiming eligibility to a contracted rate must meet, and would provide that a payor's determination of entitlement to pay a contract rate is refuted if a provider supplies specified documentation. The bill would make other related changes.

Because this bill would create new requirements for health care service plans, the willful violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Silent preferred provider organizations result when
- 4 contracting agents sell or rent the names and reimbursement rates
- 5 of their contracted health care providers to third parties, ~~allowing~~

1 ~~contracting agents to gain additional revenue and third parties to~~
2 ~~take advantage of a provider's discounted rate, even though they~~
3 ~~may not be entitled to it.~~

4 (b) ~~Despite current protections in the law, many health care~~
5 ~~providers are unaware that they have agreed to have their names~~
6 ~~and rates sold to other payors, often for no benefits in return.~~

7 ~~(e) While current law, authored initially by Senator Brulte in~~
8 ~~Senate Bill 559 of the 1999 Legislative Session, attempted to~~
9 ~~prevent these unfair practices, loopholes remain, such as the~~
10 ~~following:~~

11 ~~(1) Providers are still being forced to allow the selling or~~
12 ~~renting of their names and contract rates through "take it or leave~~
13 ~~it" contracts.~~

14 ~~(2) Other payors often take advantage of discounted contracted~~
15 ~~rates without providing any benefits to the provider, such as the~~
16 ~~referral of patients.~~

17 ~~(3) Provider~~

18 ~~(c) In some instances, provider names and discounted rates are~~
19 ~~being sold or rented to other payors offering a completely~~
20 ~~different product that requires a different level and scope of~~
21 ~~service than that contracted for in the underlying contract.~~

22 ~~(4) All of the above still occurs, This can sometimes happen~~
23 ~~even after termination of the underlying contract.~~

24 ~~(d) Furthermore, patients are harmed by the described~~
25 ~~activities in the following ways:~~

26 ~~(1) Patients' expectations concerning the level of care~~
27 ~~provided by out-of-network physicians are defeated.~~

28 ~~(2) Their providers are being forced to accept larger patient~~
29 ~~loads than they can financially or ethically handle, potentially~~
30 ~~compromising quality and care.~~

31 ~~(3) Patients are being billed by providers that are unaware that~~
32 ~~their name and discounted rates were sold to the patient's payor.~~

33 ~~(4) Patients are experiencing decreased access to care~~
34 ~~altogether, as providers are increasingly unable to enter into~~
35 ~~managed care contracts with such unfair provisions.~~

36 ~~(e) More protections are needed to end these abusive practices.~~
37 ~~The Legislature intends to enact legislation that would provide~~
38 ~~more equity in contracting in order to promote patient care.~~

39 ~~(d) The Legislature intends to enhance disclosure and~~
40 ~~contracting provisions so that providers and patients are more~~

1 *fully informed about network participation and discounted*
2 *provider rates.*

3 *SEC. 2. Section 511.1 of the Business and Professions Code*
4 *is amended to read:*

5 511.1. (a) In order to prevent the improper selling, leasing, or
6 transferring of a health care provider's contract, it is the intent of
7 the Legislature that every arrangement that results in a payor
8 paying a health care provider a reduced rate for health care
9 services based on the health care provider's participation in a
10 network or panel shall be disclosed to the provider in advance
11 and that the payor shall actively encourage beneficiaries to use
12 the network, unless the health care provider agrees to provide
13 discounts without that active encouragement.

14 (b) Beginning July 1, 2000, every contracting agent that sells,
15 leases, assigns, transfers, or conveys its list of contracted health
16 care providers and their contracted reimbursement rates to a
17 payor, as defined in subparagraph (A) of paragraph (3) of
18 subdivision (d), or another contracting agent shall, upon entering
19 or renewing a provider contract, do all of the following:

20 (1) Disclose whether the list of contracted providers may be
21 sold, leased, transferred, or conveyed to other payors or other
22 contracting agents, and specify whether those payors or
23 contracting agents include workers' compensation insurers or
24 automobile insurers.

25 (2) Disclose what specific practices, if any, payors utilize to
26 actively encourage a payor's beneficiaries to use the list of
27 contracted providers when obtaining medical care that entitles a
28 payor to claim a contracted rate. For purposes of this paragraph,
29 a payor is deemed to have actively encouraged its beneficiaries to
30 use the list of contracted providers if one of the following occurs:

31 (A) The payor's contract with subscribers or insureds offers
32 beneficiaries direct financial incentives to use the list of
33 contracted providers when obtaining medical care. "Financial
34 incentives" means reduced copayments, reduced deductibles,
35 premium discounts directly attributable to the use of a provider
36 panel, or financial penalties directly attributable to the nonuse of
37 a provider panel.

38 (B) The payor provides information directly to its
39 beneficiaries, who are parties to the contract, or, in the case of
40 workers' compensation insurance, the employer, advising them

1 of the existence of the list of contracted providers through the use
2 of a variety of advertising or marketing approaches that supply
3 the names, addresses, and telephone numbers of contracted
4 providers to beneficiaries in advance of their selection of a health
5 care provider, which approaches may include, but are not limited
6 to, the use of provider directories, or the use of toll-free
7 telephone numbers or internet web site addresses supplied
8 directly to every beneficiary. However, internet web site
9 addresses alone shall not be deemed to satisfy the requirements
10 of this subparagraph. Nothing in this subparagraph shall prevent
11 contracting agents or payors from providing only listings of
12 providers located within a reasonable geographic range of a
13 beneficiary.

14 (3) Disclose whether payors to which the list of contracted
15 providers may be sold, leased, transferred, or conveyed may be
16 permitted to pay a provider's contracted rate without actively
17 encouraging the payors' beneficiaries to use the list of contracted
18 providers when obtaining medical care. Nothing in this
19 subdivision shall be construed to require a payor to actively
20 encourage the payor's beneficiaries to use the list of contracted
21 providers when obtaining medical care in the case of an
22 emergency.

23 (4) Disclose, upon the initial signing of a contract, and within
24 30 calendar days of receipt of a written request from a provider
25 or provider panel, a payor summary of all payors currently
26 eligible to claim a provider's contracted rate due to the provider's
27 and payor's respective written agreements with any contracting
28 agent.

29 (5) Allow providers, upon the initial signing, renewal, or
30 amendment of a provider contract, to decline to be included in
31 any list of contracted providers that is sold, leased, transferred, or
32 conveyed to payors that do not actively encourage the payors'
33 beneficiaries to use the list of contracted providers when
34 obtaining medical care as described in paragraph (2). Each
35 provider's election under this paragraph shall be binding on the
36 contracting agent with which the provider has the contract and on
37 any other contracting agent that buys, leases, or otherwise obtains
38 the list of contracted providers. A provider shall not be excluded
39 from any list of contracted providers that is sold, leased,
40 transferred, or conveyed to payors that actively encourage the

1 payors' beneficiaries to use the list of contracted providers when
2 obtaining medical care, based upon the provider's refusal to be
3 included on any list of contracted providers that is sold, leased,
4 transferred, or conveyed to payors that do not actively encourage
5 the payors' beneficiaries to use the list of contracted providers
6 when obtaining medical care.

7 (6) Nothing in this subdivision shall be construed to impose
8 requirements or regulations upon payors, as defined in
9 subparagraph (A) of paragraph (3) of subdivision (d).

10 (c) Beginning July 1, 2000, a payor, as defined in
11 subparagraph (B) of paragraph (3) of subdivision (d), shall do all
12 of the following:

13 (1) Provide an explanation of benefits or explanation of review
14 that identifies the name of the plan or network that has a written
15 agreement signed by the provider whereby the payor is entitled,
16 directly or indirectly, to pay a preferred rate for the services
17 rendered.

18 (2) Demonstrate that it is entitled to pay a contracted rate
19 within 30 business days of receipt of a written request from a
20 provider who has received a claim payment from the payor. The
21 failure of a payor to make the demonstration within 30 business
22 days shall render the payor responsible for the amount that the
23 payor would have been required to pay pursuant to the contract
24 between the payor and the beneficiary, which amount shall be
25 due and payable within 10 business days of receipt of written
26 notice from the provider, and shall bar the payor from taking any
27 future discounts from that provider without the provider's
28 express written consent until the payor can demonstrate to the
29 provider that it is entitled to pay a contracted rate as provided in
30 this paragraph. A payor shall be deemed to have demonstrated
31 that it is entitled to pay a contracted rate if it complies with either
32 of the following:

33 (A) Discloses the name of the network that has a written
34 agreement with the provider whereby the provider agrees to
35 accept discounted rates, and describes the specific practices the
36 payor utilizes to comply with paragraph (2) of subdivision (b).

37 (B) Identifies the provider's written agreement with a
38 contracting agent whereby the provider agrees to be included on
39 lists of contracted providers sold, leased, transferred, or conveyed
40 to payors that do not actively encourage beneficiaries to use the

1 list of contracted providers pursuant to paragraph (5) of
2 subdivision (b).

3 (d) For the purposes of this section, the following terms have
4 the following meanings:

5 (1) “Beneficiary” means:

6 (A) For workers’ compensation insurance, an employee
7 seeking health care services for a work-related injury.

8 (B) For automobile insurance, those persons covered under the
9 medical payments portion of the insurance contract.

10 (C) For group or individual health services covered through a
11 health care service plan contract, including a specialized health
12 care service plan contract, or a policy of disability insurance that
13 covers hospital, medical, or surgical benefits, a subscriber, an
14 enrollee, a policyholder, or an insured.

15 (2) “Contracting agent” means a third-party administrator or
16 trust not licensed under the Health and Safety Code, the
17 Insurance Code, or the Labor Code, a self-insured employer, a
18 preferred provider organization, or an independent practice
19 association, while engaged, for monetary or other consideration,
20 in the act of selling, leasing, transferring, assigning, or
21 conveying, a provider or provider panel to provide health care
22 services to beneficiaries. For purposes of this section, a
23 contracting agent shall not include a health care service plan,
24 including a specialized health care service plan, an insurer
25 licensed under the Insurance Code to provide disability insurance
26 that covers hospital, medical, or surgical benefits, automobile
27 insurance, or workers’ compensation insurance, or a self-insured
28 employer.

29 (3) (A) For purposes of subdivision (b), “payor” means a
30 health care service plan, including a specialized health care
31 service plan, an insurer licensed under the Insurance Code to
32 provide disability insurance that covers hospital, medical, or
33 surgical benefits, automobile insurance, workers’ compensation
34 insurance, or a self-insured employer that is responsible to pay
35 for health care services provided to beneficiaries.

36 (B) For purposes of subdivision (c), “payor” means only those
37 entities that provide coverage for hospital, medical, or surgical
38 benefits that are not regulated under the Health and Safety Code,
39 the Insurance Code, or the Labor Code.

(4) “Payor summary” means a written summary that includes the payor’s name and the type of plan, including, but not limited to, a group health plan, an automobile insurance plan, and a workers’ compensation insurance plan.

(5) “Provider” means any of the following:

(A) Any person licensed or certified pursuant to this division.

(B) Any person licensed pursuant to the Chiropractic Initiative Act or the Osteopathic Initiative Act.

(C) Any person licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code.

(D) A clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(E) Any entity exempt from licensure pursuant to Section 1206 of the Health and Safety Code.

~~(e) This section shall become operative on July 1, 2000 inoperative on July 1, 2006, and as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.~~

SEC. 3. Section 511.1 is added to the Business and Professions Code, to read:

511.1. (a) In order to ensure that providers are able to deliver high quality care to their patients and are able to manage their practices and to ensure that fair business practices are in place to provide a more competitive and properly functioning health care delivery system, it is the intent of the Legislature to prevent the unfair selling, leasing, or transferring of a health care provider’s contract. It is further the intent of the Legislature that no health care provider shall be paid a discounted rate for health care services based on that provider’s participation in a network or panel unless and until the health care provider has voluntarily agreed in writing, in advance, to the discount with respect to each payor that claims it.

(b) Beginning July 1, 2006, no contracting agent may sell, lease, assign, transfer, or convey its list of contracted health care providers and their contracted reimbursement rates to another payor, as defined in paragraph (5) of subdivision (g), and any such transaction shall be void, unlawful, and unenforceable unless all of the following conditions are met:

1 *(I) The contracting agent has a direct contract signed by the*
2 *provider that meets all of the following requirements:*

3 *(A) Contains model language adopted by the Department of*
4 *Insurance and the Department of Managed Health Care through*
5 *emergency regulations setting forth the rights of the provider*
6 *under this section.*

7 *(B) Applies only to a single, as opposed to materially different,*
8 *product or line of business and discloses the complete fee*
9 *schedule applicable to that product or line of business.*

10 *(C) Only authorizes the sale, lease, transfer, assignment or*
11 *conveyance of the provider's name and contracted rates to the*
12 *extent that the provider specifically exercises the option*
13 *affirmatively in writing to allow his or her name and contracted*
14 *reimbursement rates to be included on the list of contracted*
15 *providers that may be sold, leased, transferred, or conveyed to*
16 *that payor. The written affirmative option to be exercised*
17 *pursuant to this section shall only be accomplished through a*
18 *separate document, on the payor summary, or in a separate*
19 *section in the contract itself, within a box outlined in black, and*
20 *shall be in a format that enables the provider to affirmatively opt*
21 *in writing, for each potential payor, whether the provider's name*
22 *and contracted rate may be sold, leased, transferred, or*
23 *conveyed to that payor through check marks or any other clearly*
24 *identifiable mechanism. To be an effective authorization, the*
25 *separate section, document, or payor summary shall be signed by*
26 *the provider. The provider's signature on the contract as a whole*
27 *does not satisfy this requirement.*

28 *(D) Discloses what specific practices, if any, payors utilize to*
29 *actively encourage a payor's beneficiaries to use the list of*
30 *contracted providers when obtaining medical care that entitles a*
31 *payor to claim a contracted rate.*

32 *(E) Clearly discloses whether the contracting agent intends to*
33 *sell, transfer, lease, assign, or convey the list of contracted*
34 *providers to any payor that does not actively encourage the*
35 *payor's beneficiaries to use the list of contracted providers when*
36 *obtaining medical care. Nothing in this subdivision shall be*
37 *construed to require a payor to actively encourage the payor's*
38 *beneficiaries to use the list of contracted providers when*
39 *obtaining medical care in the case of an emergency.*

1 (F) Allows the provider to terminate his or her authorization
2 with respect to each payor that has access to the provider's name
3 and contracted reimbursement rate on 30 days' written notice.

4 (G) Discloses all benefits and services the contracting agent
5 will provide to both the provider and the payor.

6 (H) Discloses any fees or other remuneration the contracting
7 agent may receive as a result of the sale, lease, assignment,
8 transfer or conveyance of the list of contracted health care
9 providers.

10 (2) A contracting agent that obtains a provider's power of
11 attorney shall not transfer that power of attorney to another
12 contracting agent.

13 (3) The contracting agent discloses, prior to the initial signing
14 of the contract, a payor summary of all payors that seek to be
15 eligible to claim a provider's contracted rate if the provider
16 affirmatively opts in its written agreement with the contracting
17 agent to allow his or her name and contracted reimbursement
18 rate to be sold, leased, transferred, or conveyed to that payor.

19 (4) The contracting agent discloses the provider's current
20 payor summary at least annually, and within 30 calendar days of
21 receipt of a written request from a provider.

22 (5) The contracting agent discloses by registered or certified
23 mail a payor summary of any additional payors that seek to be
24 eligible to claim a provider's contracted rate due to the
25 provider's written agreement with the contracting agent.

26 (6) The contracting agent does not transfer, sell, assign, lease,
27 or convey the list of contracted providers to any entity that is not
28 a payor, or include on the list any provider that has not
29 affirmatively agreed in writing to specifically authorize that
30 payor to have access to the provider's name and contracted
31 reimbursement rate.

32 (7) The contracting agent does not allow the payor to transfer,
33 sell, assign, lease or convey the list of contracted providers to
34 any other payor or entity.

35 (8) The contracting agent requires those payors that are
36 eligible to claim a provider's contracted rate to cease claiming
37 entitlement to that rate upon termination of the provider's
38 underlying contract or termination of the provider's
39 authorization to allow that payor to continue to have access to
40 the provider's name and contracted reimbursement rate.

1 (9) *The contracting agent provides to a payor, upon the*
2 *payor's request where its entitlement to a discount is being*
3 *challenged, a copy of the agreement whereby the provider*
4 *affirmatively agreed in writing to specifically authorize that*
5 *payor to have access to that provider's name and contracted*
6 *reimbursement rate.*

7 (10) *The activity does not violate any other provision of law.*

8 (11) *The contracting agent may only receive access fees or*
9 *other remuneration for the sale, lease, transfer, or conveyance of*
10 *a provider's name and contracted rate as long as the list of*
11 *contracted providers is sold, transferred, leased, or conveyed to*
12 *a payor that actively encourages a payor's beneficiaries to use*
13 *the list of contracted providers when obtaining medical care.*

14 (c) *A provider shall be free to allow or decline the sale,*
15 *leasing, transfer, or conveyance of the provider's name and*
16 *contracted reimbursement rate with respect to each potential*
17 *payor without penalty, sanction, or retaliation of any kind,*
18 *including exclusion from the contracting agent's network.*

19 (d) *No payor shall be eligible to claim a provider's contracted*
20 *rate unless the payor's name has been identified on the payor*
21 *summary provided by the contracting agent and the provider has*
22 *affirmatively opted in writing to allow that payor to use that rate.*

23 (e) *Beginning July 1, 2006, a payor, as defined in paragraph*
24 *(5) of subdivision (g), that claims eligibility to a provider's*
25 *contracted rate shall do both of the following:*

26 (1) *Include on the explanation of benefits, remittance advice,*
27 *and any other explanation of review, the identity of the*
28 *contracting agent through which the discount is claimed, as well*
29 *as the names and telephone numbers of the individual or unit*
30 *responsible for provider contracting for the contracting agent*
31 *identified on the patient's insurance card that has a written*
32 *agreement signed by the provider who submitted the claim*
33 *whereby the payor is directly entitled to pay a preferred rate for*
34 *the services rendered.*

35 (2) *Demonstrate that it is entitled to pay a contracted rate*
36 *within 30 business days of receipt of a written request from a*
37 *provider who has received a claim payment from the payor. A*
38 *payor can initially determine such entitlement where it provides*
39 *all of the following:*

1 (A) Documentation of the name of the contracting agent and
2 telephone number of the individual or unit responsible for
3 provider contracting that has the written agreement signed by the
4 provider whereby the provider affirmatively opted to accept
5 discounted rates from the payor in question to be furnished to
6 that provider.

7 (B) Documentation that the contract was not sold, leased,
8 transferred, assigned, or conveyed to a payor for a product or
9 business line that is materially different from that to which the
10 underlying contract applies as it relates to increased workload or
11 other responsibilities imposed or as it relates to decreased
12 benefits conferred on the provider.

13 (C) Documentation that the patient to whom the services were
14 provided was covered by the product or business line with
15 respect to which the provider agreed to authorize discounts.

16 (D) Documentation that the patient was covered by an entity
17 authorized to claim a discount.

18 (E) Documentation that the underlying contract is with a
19 provider that has the same tax or employer identification number
20 as that of the provider's practice that submitted the claim at
21 issue. The failure of a payor to make the demonstration within 30
22 business days shall render the payor responsible for the amount
23 that the payor would have been required to pay pursuant to the
24 contract between the payor and the beneficiary, which shall be
25 due and payable within 10 business days of receipt of written
26 notice from the provider, and shall bar the payor from taking any
27 future discounts from that provider without the provider's
28 express written consent until the payor can demonstrate to the
29 provider that it is entitled to pay a contracted rate as provided in
30 this paragraph.

31 (f) A payor's initial determination that it is entitled to pay a
32 contracted rate is deemed refuted where the provider provides
33 any of the following:

34 (1) Documentation that the provider opted not to be on the list
35 of contracted providers at issue.

36 (2) Documentation that the provider terminated the underlying
37 contract.

38 (3) Documentation that the contract was sold, leased,
39 transferred, assigned, or conveyed to a payor for a product or
40 business line that is materially different from that to which the

1 *underlying contract applies as it relates to increased workload or*
2 *other responsibilities imposed or as it relates to decreased*
3 *benefits conferred on the provider.*

4 *(4) Documentation that the patient was not covered by an*
5 *entity authorized to claim a discount.*

6 *(5) Documentation that the underlying contract is with a*
7 *provider that has a different tax or employer identification*
8 *number than that of the provider's practice that submitted the*
9 *claim at issue.*

10 *(g) For the purposes of this section, the following terms have*
11 *the following meanings:*

12 *(1) "Actively encouraged its beneficiaries to use the list of*
13 *contracted providers" means that either of the following*
14 *requirements are met:*

15 *(A) The payor's contract with subscribers or insureds offers*
16 *beneficiaries direct financial incentives to use the list of*
17 *contracted providers when obtaining medical care. "Financial*
18 *incentives" means reduced copayments, reduced deductibles,*
19 *premium discounts directly attributable to the use of a provider*
20 *panel, or financial penalties directly attributable to the nonuse of*
21 *a provider panel.*

22 *(B) The payor provides information directly to its beneficiaries*
23 *advising them of the existence of the list of contracted providers*
24 *through the use of a variety of advertising or marketing*
25 *approaches that supply the names, addresses, and telephone*
26 *numbers of contracted providers to beneficiaries in advance of*
27 *their selection of a health care provider, which approaches may*
28 *include, but are not limited to, the use of provider directories, or*
29 *the use of toll-free telephone numbers or Internet Web site*
30 *addresses supplied directly to every beneficiary. However,*
31 *Internet Web site addresses alone shall not be deemed to satisfy*
32 *the requirements of this subparagraph. Nothing in this*
33 *subparagraph shall prevent contracting agents or payors from*
34 *providing only listings of providers located within a reasonable*
35 *geographic range of a beneficiary.*

36 *(2) "Beneficiary" means the following:*

37 *(A) For workers' compensation insurance, an employee*
38 *seeking health care services for a work-related injury.*

39 *(B) For automobile insurance, those persons covered under*
40 *the medical payments portion of the insurance contract.*

1 (C) For group or individual health services covered through a
2 health care service plan contract including a specialized health
3 care service plan contract or a policy of disability insurance that
4 covers hospital, medical, or surgical benefits, a subscriber, an
5 enrollee, a policyholder, or an insured.

6 (3) "Contracting agent" means a third-party administrator or
7 trust not licensed under the Health and Safety Code, the
8 Insurance Code, or the Labor Code, a self-insured employer, a
9 preferred provider organization, an independent practice
10 association, or any other entity while engaged, for monetary or
11 other consideration, in the act of selling, leasing, transferring,
12 assigning, or conveying a provider or provider panel to provide
13 health care services to beneficiaries. For purposes of this
14 section, a contracting agent shall not include a health care
15 service plan, including a specialized health care service plan, an
16 insurer licensed under the Insurance Code to provide disability
17 insurance that covers hospital, medical, or surgical benefits,
18 automobile insurance, or workers' compensation insurance, or a
19 self-insured employer. A contracting agent shall not include
20 either of the following:

21 (A) A group of health care providers organized as a
22 partnership or professional corporation that contracts with only
23 one health care service plan to provide or arrange for the
24 provision of health care services to that plan's members.

25 (B) A hospital corporation that has an identical board of
26 directors with a health plan that exclusively contracts with the
27 group of providers described in subparagraph (A) to provide
28 professional medical services to its enrollees.

29 (4) "Materially different" means a network, product, or
30 business line that a reasonable provider would attach
31 importance to in determining whether to participate in it,
32 including, but not limited to, in addition to the fee schedule
33 amount, the types of services to be provided, claims processing
34 rules, utilization review procedures, and patient collection
35 processes.

36 (5) "Payor" means a health care service plan, including a
37 specialized health care service plan, an insurer licensed under
38 the Insurance Code to provide disability insurance that covers
39 hospital, medical, or surgical benefits, automobile insurance,
40 workers' compensation insurance, or a self-insured employer

1 *that is responsible to pay for health care services provided to*
2 *beneficiaries. "Payor" also means only those entities that*
3 *provide coverage for hospital, medical, or surgical benefits that*
4 *are not regulated under the Health and Safety Code, the*
5 *Insurance Code, or the Labor Code.*

6 *(6) "Payor summary" means a written summary that includes*
7 *the payor's name, the type of plan, including, but not limited to,*
8 *a group health plan, an automobile insurance plan, and a*
9 *workers' compensation insurance plan, and the specific*
10 *practices, if any, the payor utilizes to actively encourage a*
11 *payor's beneficiaries to use the list of contracted providers when*
12 *obtaining medical care and the identity and telephone number*
13 *for the individual or office responsible for handling provider*
14 *reimbursement. The payor summary shall clearly identify each*
15 *payor that does not actively encourage its beneficiaries to do so.*
16 *The payor summary shall be set forth within a box outlined in*
17 *black and in a format that provides the opportunity for the*
18 *provider to affirmatively opt in writing to allow or decline the*
19 *sale, transfer, lease, or conveyance of the provider's name and*
20 *contracted rates with respect to each payor on the summary,*
21 *through check marks or any other clearly identifiable*
22 *mechanism, and, to the extent the provider has already made this*
23 *election, clearly discloses each such election that the provider*
24 *has made. The payor summary shall be signed by the provider.*

25 *(7) "Provider" means any of the following:*

26 *(A) A person licensed or certified pursuant to this division.*

27 *(B) A person licensed pursuant to the Chiropractic Initiative*
28 *Act or the Osteopathic Initiative Act.*

29 *(C) A person licensed pursuant to Chapter 2.5 (commencing*
30 *with Section 1440) of Division 2 of the Health and Safety Code.*

31 *(D) A clinic, health dispensary, or health facility licensed*
32 *pursuant to Division 2 (commencing with Section 1200) of the*
33 *Health and Safety Code.*

34 *(E) Any entity exempt from licensure pursuant to Section 1206*
35 *of the Health and Safety Code.*

36 *(h) This section shall become operative July 1, 2006.*

37 *SEC. 4. Section 511.3 of the Business and Professions Code*
38 *is amended to read:*

39 *511.3. (a) When a contracting agent sells, leases, or transfers*
40 *a health provider's contract to a payor, the rights and obligations*

1 of the provider shall be governed by the underlying contract
2 between the health care provider and the contracting agent.

3 (b) *Notwithstanding any other provision of law, the underlying*
4 *contract shall not obligate a provider to participate in materially*
5 *different networks, products, or business lines, nor authorize, or*
6 *otherwise require the provider to consent to the sale, lease,*
7 *transfer, assignment, or conveyance of the contracted list of*
8 *providers to any network, product, or business line that is*
9 *materially different from that to which the underlying contract*
10 *applies, either as it relates to increased workload or other*
11 *responsibilities imposed on the provider or as it relates to any*
12 *decreased benefits conferred on the provider. “Materially*
13 *different,” for the purposes of this section, means a network,*
14 *product, or business line that a reasonable provider would attach*
15 *importance to in determining whether to participate in it,*
16 *including, but not limited to, the fee schedule amount, the types*
17 *of services to be provided, claims processing and payment rules,*
18 *utilization review procedures, and patient collection processes.*

19 (c) For purposes of this section, the following terms shall have
20 the following meanings:

21 (1) “Contracting agent” has the meaning set forth in ~~paragraph~~
22 ~~(2) of subdivision (d) of Section 511.1.~~

23 (2) “Payor” has the meaning set forth in ~~paragraph (3) of~~
24 ~~subdivision (d) of Section 511.1.~~

25 SEC. 5. Section 1375.7 of the Health and Safety Code is
26 amended to read:

27 1375.7. (a) This section shall be known and may be cited as
28 the Health Care Providers’ Bill of Rights.

29 (b) No contract issued, amended, or renewed on or after
30 January 1, 2003, between a plan and a health care provider for
31 the provision of health care services to a plan enrollee or
32 subscriber shall contain any of the following terms:

33 (1) (A) Authority for the plan to change a material term of the
34 contract, unless the change has first been negotiated and agreed
35 to by the provider and the plan or the change is necessary to
36 comply with state or federal law or regulations or any
37 accreditation requirements of a private sector accreditation
38 organization. If a change is made by amending a manual, policy,
39 or procedure document referenced in the contract, the plan shall
40 provide 45 business days’ notice to the provider, and the provider

1 has the right to negotiate and agree to the change. If the plan and
2 the provider cannot agree to the change to a manual, policy, or
3 procedure document, the provider has the right to terminate the
4 contract prior to the implementation of the change. In any event,
5 the plan shall provide at least 45 business days' notice of its
6 intent to change a material term, unless a change in state or
7 federal law or regulations or any accreditation requirements of a
8 private sector accreditation organization requires a shorter
9 timeframe for compliance. However, if the parties mutually
10 agree, the 45-business day notice requirement may be waived.
11 Nothing in this subparagraph limits the ability of the parties to
12 mutually agree to the proposed change at any time after the
13 provider has received notice of the proposed change.

14 (B) If a contract between a provider and a plan provides
15 benefits to enrollees or subscribers through a preferred provider
16 arrangement, the contract may contain provisions permitting a
17 material change to the contract by the plan if the plan provides at
18 least 45 business days' notice to the provider of the change and
19 the provider has the right to terminate the contract prior to the
20 implementation of the change.

21 (C) If a contract between a noninstitutional provider and a plan
22 provides benefits to enrollees or subscribers covered under the
23 Medi-Cal or Healthy Families program and compensates the
24 provider on a fee-for-service basis, the contract may contain
25 provisions permitting a material change to the contract by the
26 plan, if the following requirements are met:

27 (i) The plan gives the provider a minimum of 90 business
28 days' notice of its intent to change a material term of the
29 contract.

30 (ii) The plan clearly gives the provider the right to exercise his
31 or her intent to negotiate and agree to the change within 30
32 business days of the provider's receipt of the notice described in
33 clause (i).

34 (iii) The plan clearly gives the provider the right to terminate
35 the contract within 90 business days from the date of the
36 provider's receipt of the notice described in clause (i) if the
37 provider does not exercise the right to negotiate the change or no
38 agreement is reached, as described in clause (ii).

39 (iv) The material change becomes effective 90 business days
40 from the date of the notice described in clause (i) if the provider

1 does not exercise his or her right to negotiate the change, as
2 described in clause (ii), or to terminate the contract, as described
3 in clause (iii).

4 (2) A provision that requires a health care provider to accept
5 additional patients beyond the contracted number or in the
6 absence of a number if, in the reasonable professional judgment
7 of the provider, accepting additional patients would endanger
8 patients' access to, or continuity of, care.

9 (3) A requirement to comply with quality improvement or
10 utilization management programs or procedures of a plan, unless
11 the requirement is fully disclosed to the health care provider at
12 least 15 business days prior to the provider executing the
13 contract. However, the plan may make a change to the quality
14 improvement or utilization management programs or procedures
15 at any time if the change is necessary to comply with state or
16 federal law or regulations or any accreditation requirements of a
17 private sector accreditation organization. A change to the quality
18 improvement or utilization management programs or procedures
19 shall be made pursuant to paragraph (1).

20 (4) A provision that waives or conflicts with any provision of
21 this chapter. A provision in the contract that allows the plan to
22 provide professional liability or other coverage or to assume the
23 cost of defending the provider in an action relating to
24 professional liability or other action is not in conflict with, or in
25 violation of, this chapter.

26 (5) A requirement to permit access to patient information in
27 violation of federal or state laws concerning the confidentiality of
28 patient information.

29 (c) (1) When a contracting agent sells, leases, or transfers a
30 health provider's contract to a payor, the rights and obligations of
31 the provider shall be governed by the underlying contract
32 between the health care provider and the contracting agent.

33 (2) *Notwithstanding any other provision of law, the underlying*
34 *contract shall not obligate a provider to participate in materially*
35 *different networks, products, or business lines, nor authorize, or*
36 *otherwise require the provider to consent to the sale, lease,*
37 *transfer, assignment, or conveyance of the contracted list of*
38 *providers to any network, product, or business line that is*
39 *materially different from that to which the underlying contract*
40 *applies, either as it relates to increased workload or other*

responsibilities imposed on the provider or as it relates to any decreased benefits conferred on the provider. “Materially different,” for the purposes of this section, means a network, product, or business line that a reasonable provider would attach importance to in determining whether to participate in it, including, but not limited to, the fee schedule amount, the types of services to be provided, claims processing and payment rules, utilization review procedures, and patient collection processes.

(3) For purposes of this subdivision, the following terms shall have the following meanings:

(A) “Contracting agent” has the meaning set forth in ~~paragraph (2) of subdivision (d) of~~ Section 1395.6.

(B) “Payor” has the meaning set forth in ~~paragraph (3) of subdivision (d) of~~ Section 1395.6.

(d) Any contract provision that violates subdivision (b) or (c) shall be void, unlawful, and unenforceable.

(e) The department shall compile the information submitted by plans pursuant to subdivision (h) of Section 1367 into a report and submit the report to the Governor and the Legislature by March 15 of each calendar year.

(f) Nothing in this section shall be construed or applied as setting the rate of payment to be included in contracts between plans and health care providers.

(g) For purposes of this section the following definitions apply:

(1) “Health care provider” means any professional person, medical group, independent practice association, organization, health care facility, or other person or institution licensed or authorized by the state to deliver or furnish health services.

(2) “Material” means a provision in a contract to which a reasonable person would attach importance in determining the action to be taken upon the provision.

SEC. 6. Section 1395.6 of the Health and Safety Code is amended to read:

1395.6. (a) In order to prevent the improper selling, leasing, or transferring of a health care provider’s contract, it is the intent of the Legislature that every arrangement that results in a payor paying a health care provider a reduced rate for health care services based on the health care provider’s participation in a network or panel shall be disclosed to the provider in advance

1 and that the payor shall actively encourage beneficiaries to use
2 the network, unless the health care provider agrees to provide
3 discounts without that active encouragement.

4 (b) Beginning July 1, 2000, every contracting agent that sells,
5 leases, assigns, transfers, or conveys its list of contracted health
6 care providers and their contracted reimbursement rates to a
7 payor, as defined in subparagraph (A) of paragraph (3) of
8 subdivision (d), or another contracting agent shall, upon entering
9 or renewing a provider contract, do all of the following:

10 (1) Disclose to the provider whether the list of contracted
11 providers may be sold, leased, transferred, or conveyed to other
12 payors or other contracting agents, and specify whether those
13 payors or contracting agents include workers' compensation
14 insurers or automobile insurers.

15 (2) Disclose what specific practices, if any, payors utilize to
16 actively encourage a payor's beneficiaries to use the list of
17 contracted providers when obtaining medical care that entitles a
18 payor to claim a contracted rate. For purposes of this paragraph,
19 a payor is deemed to have actively encouraged its beneficiaries to
20 use the list of contracted providers if one of the following occurs:

21 (A) The payor's contract with subscribers or insureds offers
22 beneficiaries direct financial incentives to use the list of
23 contracted providers when obtaining medical care. "Financial
24 incentives" means reduced copayments, reduced deductibles,
25 premium discounts directly attributable to the use of a provider
26 panel, or financial penalties directly attributable to the nonuse of
27 a provider panel.

28 (B) The payor provides information to its beneficiaries, who
29 are parties to the contract, or, in the case of workers'
30 compensation insurance, the employer, advising them of the
31 existence of the list of contracted providers through the use of a
32 variety of advertising or marketing approaches that supply the
33 names, addresses, and telephone numbers of contracted providers
34 to beneficiaries in advance of their selection of a health care
35 provider, which approaches may include, but are not limited to,
36 the use of provider directories, or the use of toll-free telephone
37 numbers or Internet web site addresses supplied directly to every
38 beneficiary. However, internet web site addresses alone shall not
39 be deemed to satisfy the requirements of this subparagraph.
40 Nothing in this subparagraph shall prevent contracting agents or

1 payors from providing only listings of providers located within a
2 reasonable geographic range of a beneficiary.

3 (3) Disclose whether payors to which the list of contracted
4 providers may be sold, leased, transferred, or conveyed may be
5 permitted to pay a provider's contracted rate without actively
6 encouraging the payors' beneficiaries to use the list of contracted
7 providers when obtaining medical care. Nothing in this
8 subdivision shall be construed to require a payor to actively
9 encourage the payor's beneficiaries to use the list of contracted
10 providers when obtaining medical care in the case of an
11 emergency.

12 (4) Disclose, upon the initial signing of a contract, and within
13 30 calendar days of receipt of a written request from a provider
14 or provider panel, a payor summary of all payors currently
15 eligible to claim a provider's contracted rate due to the provider's
16 and payor's respective written agreement with any contracting
17 agent.

18 (5) Allow providers, upon the initial signing, renewal, or
19 amendment of a provider contract, to decline to be included in
20 any list of contracted providers that is sold, leased, transferred, or
21 conveyed to payors that do not actively encourage the payors'
22 beneficiaries to use the list of contracted providers when
23 obtaining medical care as described in paragraph (2). Each
24 provider's election under this paragraph shall be binding on the
25 contracting agent with which the provider has the contract and
26 any contracting agent that buys, leases, or otherwise obtains the
27 list of contracted providers. A provider shall not be excluded
28 from any list of contracted providers that is sold, leased,
29 transferred, or conveyed to payors that actively encourage the
30 payors' beneficiaries to use the list of contracted providers when
31 obtaining medical care, based upon the provider's refusal to be
32 included on any list of contracted providers that is sold, leased,
33 transferred, or conveyed to payors that do not actively encourage
34 the payors' beneficiaries to use the list of contracted providers
35 when obtaining medical care.

36 (6) Nothing in this subdivision shall be construed to impose
37 requirements or regulations upon payors, as defined in
38 subparagraph (A) of paragraph (3) of subdivision (d).

(c) Beginning July 1, 2000, a payor, as defined in subparagraph (B) of paragraph (3) of subdivision (d), shall do all of the following:

(1) Provide an explanation of benefits or explanation of review that identifies the name of the network that has a written agreement signed by the provider whereby the payor is entitled, directly or indirectly, to pay a preferred rate for the services rendered.

(2) Demonstrate that it is entitled to pay a contracted rate within 30 business days of receipt of a written request from a provider who has received a claim payment from the payor. The failure of a payor to make the demonstration within 30 business days shall render the payor responsible for the amount that the payor would have been required to pay pursuant to the applicable health care service plan contract, including a specialized health care service plan contract, covering the beneficiary, which amount shall be due and payable within 10 business days of receipt of written notice from the provider, and shall bar the payor from taking any future discounts from that provider without the provider's express written consent until the payor can demonstrate to the provider that it is entitled to pay a contracted rate as provided in this paragraph. A payor shall be deemed to have demonstrated that it is entitled to pay a contracted rate if it complies with either of the following:

(A) Discloses the name of the network that has a written agreement with the provider whereby the provider agrees to accept discounted rates, and describes the specific practices the payor utilizes to comply with paragraph (2) of subdivision (b).

(B) Identifies the provider's written agreement with a contracting agent whereby the provider agrees to be included on lists of contracted providers sold, leased, transferred, or conveyed to payors that do not actively encourage beneficiaries to use the list of contracted providers pursuant to paragraph (5) of subdivision (b).

(d) For the purposes of this section, the following terms have the following meanings:

(1) "Beneficiary" means:

(A) For workers' compensation insurance, an employee seeking health care services for a work-related injury.

1 (B) For automobile insurance, those persons covered under
2 the medical payments portion of the insurance contract.

3 (C) For group or individual health services covered through a
4 health care service plan contract, including a specialized health
5 care service plan contract, or a policy of disability insurance that
6 covers hospital, medical, or surgical benefits, a subscriber, an
7 enrollee, a policyholder, or an insured.

8 (2) “Contracting agent” means a health care service plan,
9 including a specialized health care service plan, while engaged,
10 for monetary or other consideration, in the act of selling, leasing,
11 transferring, assigning, or conveying, a provider or provider
12 panel to payors to provide health care services to beneficiaries.

13 (3) (A) For the purposes of subdivision (b), “payor” means a
14 health care service plan, including a specialized health care
15 service plan, an insurer licensed under the Insurance Code to
16 provide disability insurance that covers hospital, medical, or
17 surgical benefits, automobile insurance, workers’ compensation
18 insurance, or a self-insured employer that is responsible to pay
19 for health care services provided to beneficiaries.

20 (B) For the purposes of subdivision (c), “payor” means only a
21 health care service plan, including a specialized health care
22 service plan that has purchased, leased, or otherwise obtained the
23 use of a provider or provider panel to provide health care services
24 to beneficiaries pursuant to a contract that authorizes payment at
25 discounted rates.

26 (4) “Payor summary” means a written summary that includes
27 the payor’s name and the type of plan, including, but not limited
28 to, a group health plan, an automobile insurance plan, and a
29 workers’ compensation insurance plan.

30 (5) “Provider” means any of the following:

31 (A) Any person licensed or certified pursuant to Division 2
32 (commencing with Section 500) of the Business and Professions
33 Code.

34 (B) Any person licensed pursuant to the Chiropractic
35 Initiative Act or the Osteopathic Initiative Act.

36 (C) Any person licensed pursuant to Chapter 2.5
37 (commencing with Section 1440) of Division 2.

38 (D) A clinic, health dispensary, or health facility licensed
39 pursuant to Division 2 (commencing with Section 1200).

1 (E) Any entity exempt from licensure pursuant to Section
2 1206.

3 (e) This section shall become ~~operative on July 1, 2000~~
4 *inoperative on July 1, 2006, and, as of January 1, 2007, is*
5 *repealed, unless a later enacted statute that is enacted before*
6 *January 1, 2007, deletes or extends the dates on which it*
7 *becomes inoperative and is repealed.*

8 SEC. 7. Section 1395.6 is added to the Health and Safety
9 Code, to read:

10 1395.6. (a) *In order to ensure that providers are able to*
11 *deliver high quality care to their patients and are able to manage*
12 *their practices and that fair business practices are in place to*
13 *provide a more competitive and properly functioning health care*
14 *delivery system, it is the intent of the Legislature to prevent the*
15 *unfair selling, leasing, or transferring of a health care provider's*
16 *contract. It is further the intent of the Legislature that no health*
17 *care provider shall be paid a discounted rate for health care*
18 *services based on that provider's participation in a network or*
19 *panel unless and until the health care provider has voluntarily*
20 *agreed in writing, in advance, to the discount with respect to*
21 *each payor that claims it.*

22 (b) *Beginning July 1, 2006, no contracting agent may sell,*
23 *lease, assign, transfer, or convey its list of contracted health care*
24 *providers and their contracted reimbursement rates to another*
25 *payor, as defined in paragraph (5) of subdivision (g), and any*
26 *such transaction shall be void, unlawful and unenforceable*
27 *unless all of the following conditions are met:*

28 (1) *The contracting agent has a direct contract signed by the*
29 *provider that meets all of the following requirements:*

30 (A) *Contains model language adopted by the Department of*
31 *Insurance and the Department of Managed Health Care through*
32 *emergency regulations setting forth the rights of the provider*
33 *under this section.*

34 (B) *Applies only to a single, as opposed to materially different,*
35 *product or line of business, and discloses the complete fee*
36 *schedule applicable to that product or line of business.*

37 (C) *Only authorizes the sale, lease, transfer, assignment or*
38 *conveyance of the provider's name and contracted rates to the*
39 *extent the provider specifically exercises the option affirmatively*
40 *in writing to allow his or her name and contracted*

1 reimbursement rates to be included on the list of contracted
2 providers that may be sold, leased, transferred, or conveyed to
3 that payor. The written affirmative option to be exercised
4 pursuant to this section shall only be accomplished through a
5 separate document, on the payor summary, or in a separate
6 section in the contract itself, within a box outlined in black, and
7 in a format that enables the provider to affirmatively opt in
8 writing, for each potential payor, whether the provider's name
9 and contracted rate may be sold, leased, transferred or conveyed
10 to that payor through check marks or any other clearly
11 identifiable mechanism. To be an effective authorization, the
12 separate section, document, or payor summary shall be signed by
13 the provider. The provider's signature on the contract as a whole
14 does not satisfy this requirement.

15 (D) Discloses what specific practices, if any, payors utilize to
16 actively encourage a payor's beneficiaries to use the list of
17 contracted providers when obtaining medical care that entitles a
18 payor to claim a contracted rate.

19 (E) Clearly discloses whether the contracting agent intends to
20 sell, transfer, lease, assign, or convey the list of contracted
21 providers to any payor that does not actively encourage a
22 payor's beneficiaries to use the list of contracted providers when
23 obtaining medical care. Nothing in this subdivision shall be
24 construed to require a payor to actively encourage the payor's
25 beneficiaries to use the list of contracted providers when
26 obtaining medical care in the case of an emergency.

27 (F) Allows the provider to terminate his or her authorization
28 with respect to each payor that has access to the provider's name
29 and contracted reimbursement rate on 30 days' written notice.

30 (G) Discloses all benefits and services the contracting agent
31 will provide to both the provider and payor.

32 (H) Discloses any fees or other remuneration the contracting
33 agent may receive as a result of the sale, lease, assignment,
34 transfer or conveyance of the list of contracted health care
35 providers.

36 (2) A contracting agent that obtains a provider's power of
37 attorney shall not transfer that power of attorney to another
38 contracting agent.

39 (3) The contracting agent discloses, prior to the initial signing
40 of the contract, a payor summary of all payors that seek to be

1 eligible to claim a provider's contracted rate if the provider
2 affirmatively opts in its written agreement with the contracting
3 agent to allow his or her name and contracted reimbursement
4 rate to be sold, leased, transferred, or conveyed to that payor.

5 (4) The contracting agent discloses the provider's current
6 payor summary at least annually, and within 30 calendar days of
7 receipt of a written request from a provider.

8 (5) The contracting agent discloses by registered or certified
9 mail a payor summary of any additional payors that seek to be
10 eligible to claim a provider's contracted rate due to the
11 provider's written agreement with the contracting agent.

12 (6) The contracting agent does not transfer, sell, assign, lease,
13 or convey the list of contracted providers to any entity that is not
14 a payor, or include on the list any provider that has not
15 affirmatively agreed in writing to specifically authorize that
16 payor to have access to the provider's name and contracted
17 reimbursement rate.

18 (7) The contracting agent does not allow the payor to transfer,
19 sell, assign, lease or convey the list of contracted providers to
20 any other payor or entity.

21 (8) The contracting agent requires those payors that are
22 eligible to claim a provider's contracted rate to cease claiming
23 entitlement to that rate upon termination of the provider's
24 underlying contract, or termination of the provider's
25 authorization to allow that payor to continue to have access to
26 the provider's name and contracted reimbursement rate.

27 (9) The contracting agent provides to the payor, upon a
28 payor's request where its entitlement to a discount is being
29 challenged, a copy of the agreement whereby the provider
30 affirmatively agreed in writing to specifically authorize that
31 payor to have access to that provider's name and contracted
32 reimbursement rate.

33 (10) The activity does not violate any other provision of law.

34 (11) The contracting agent may only receive access fees or
35 other remuneration for the sale, lease, transfer, or conveyance of
36 a provider's name and contracted rate as long as the list of
37 contracted providers is sold, transferred, leased, or conveyed to
38 a payor that actively encourages a payor's beneficiaries to use
39 the list of contracted providers when obtaining medical care.

1 (c) A provider shall be free to allow or decline the sale,
2 leasing, transfer, or conveyance of the provider's name and
3 contracted reimbursement rate with respect to each potential
4 payor without penalty, sanction, or retaliation of any kind,
5 including exclusion from the contracting agent's network.

6 (d) No payor shall be eligible to claim a provider's contracted
7 rate unless the payor's name has been identified on the payor
8 summary provided by the contracting agent and the provider has
9 affirmatively opted in writing to allow that payor to use that rate.

10 (e) Beginning July 1, 2006, a payor, as defined in paragraph
11 (5) of subdivision (g), that claims eligibility to a provider's
12 contracted rate shall do both of the following:

13 (1) Include on the explanation of benefits, remittance advice,
14 and any other explanation of review the identity of the
15 contracting agent through which the discount is claimed, as well
16 as the names and telephone numbers of the individual or unit
17 responsible for provider contracting for the contracting agent
18 identified on the patient's insurance card that has a written
19 agreement signed by the provider who submitted the claim
20 whereby the payor is directly entitled to pay a preferred rate for
21 the services rendered.

22 (2) Demonstrate that it is entitled to pay a contracted rate
23 within 30 business days of receipt of a written request from a
24 provider who has received a claim payment from the payor. A
25 payor can initially determine such entitlement where it provides
26 all of the following:

27 (A) Documentation of the name of the contracting agent and
28 telephone number of the individual or unit responsible for
29 provider contracting that has the written agreement signed by the
30 provider whereby the provider affirmatively opted to accept
31 discounted rates from the payor in question to be furnished to
32 that provider.

33 (B) Documentation that the contract was not sold, leased,
34 transferred, assigned, or conveyed to a payor for a product or
35 business line that is materially different from that to which the
36 underlying contract applies as it relates to increased workload or
37 other responsibilities imposed or as it relates to decreased
38 benefits conferred on the provider.

1 (C) Documentation that the patient to whom the services were
2 provided was covered by the product or business line with
3 respect to which the provider agreed to authorize discounts.

4 (D) Documentation that the patient was covered by an entity
5 authorized to claim a discount.

6 (E) Documentation that the underlying contract is with a
7 provider that has the same tax or employer identification number
8 as that of the provider's practice that submitted the claim at
9 issue. The failure of a payor to make the demonstration within 30
10 business days shall render the payor responsible for the amount
11 that the payor would have been required to pay pursuant to the
12 contract between the payor and the beneficiary, which shall be
13 due and payable within 10 business days of receipt of written
14 notice from the provider, and shall bar the payor from taking any
15 future discounts from that provider without the provider's
16 express written consent until the payor can demonstrate to the
17 provider that it is entitled to pay a contracted rate as provided in
18 this paragraph.

19 (f) A payor's initial determination that it is entitled to pay a
20 contracted rate is deemed refuted where the provider provides
21 any of the following:

22 (1) Documentation that the provider opted not to be on the list
23 of contracted providers at issue.

24 (2) Documentation that the provider terminated the underlying
25 contract.

26 (3) Documentation that the contract was sold, leased,
27 transferred, assigned or conveyed to a payor for a product or
28 business line that is materially different from that to which the
29 underlying contract applies as it relates to increased workload or
30 other responsibilities imposed or as it relates to decreased
31 benefits conferred on the provider.

32 (4) Documentation that the patient was not covered by an
33 entity authorized to claim a discount.

34 (5) Documentation that the underlying contract is with a
35 provider that has a different tax or employer identification
36 number than that of the provider's practice that submitted the
37 claim at issue.

38 (g) For the purposes of this section, the following terms have
39 the following meanings:

1 (1) *“Actively encouraged its beneficiaries to use the list of*
2 *contracted providers” means either of the following*
3 *requirements are met:*

4 (A) *The payor’s contract with subscribers or insureds offers*
5 *beneficiaries direct financial incentives to use the list of*
6 *contracted providers when obtaining medical care. “Financial*
7 *incentives” means reduced copayments, reduced deductibles,*
8 *premium discounts directly attributable to the use of a provider*
9 *panel, or financial penalties directly attributable to the nonuse of*
10 *a provider panel.*

11 (B) *The payor provides information directly to its beneficiaries*
12 *advising them of the existence of the list of contracted providers*
13 *through the use of a variety of advertising or marketing*
14 *approaches that supply the names, addresses, and telephone*
15 *numbers of contracted providers to beneficiaries in advance of*
16 *their selection of a health care provider, which approaches may*
17 *include, but are not limited to, the use of provider directories, or*
18 *the use of toll-free telephone numbers or Internet Web site*
19 *addresses supplied directly to every beneficiary. However,*
20 *Internet Web site addresses alone shall not be deemed to satisfy*
21 *the requirements of this subparagraph. Nothing in this*
22 *subparagraph shall prevent contracting agents or payors from*
23 *providing only listings of providers located within a reasonable*
24 *geographic range of a beneficiary.*

25 (2) *“Beneficiary” means the following:*

26 (A) *For workers’ compensation insurance, an employee*
27 *seeking health care services for a work-related injury.*

28 (B) *For automobile insurance, those persons covered under*
29 *the medical payments portion of the insurance contract.*

30 (C) *For group or individual health services covered through a*
31 *health care service plan contract including a specialized health*
32 *care service plan contract, or a policy of disability insurance that*
33 *covers hospital, medical, or surgical benefits, a subscriber, an*
34 *enrollee, a policyholder, or an insured.*

35 (3) *“Contracting agent” means a health care service plan,*
36 *including a specialized health care service plan, or any other*
37 *entity while engaged, for monetary or other consideration, in the*
38 *act of selling, leasing, transferring, assigning or conveying, a*
39 *provider or provider panel to payors to provide health care*

1 services to beneficiaries. A contracting agent shall not include
2 either of the following:

3 (A) A group of health care providers organized as a
4 partnership or professional corporation that contracts with only
5 one health care service plan to provide or arrange for the
6 provision of health care services to that plan's members.

7 (B) A hospital corporation that has an identical board of
8 directors with a health plan that exclusively contracts with the
9 group of providers described in subparagraph (A) to provide
10 professional medical services to its enrollees.

11 (4) "Materially different" means a network, product, or
12 business line that a reasonable provider would attach
13 importance to in determining whether to participate in it,
14 including, but not limited to, in addition to the fee schedule
15 amount, the types of services to be provided, claims processing
16 rules, utilization review procedures, and patient collection
17 processes.

18 (5) "Payor" means a health care service plan, including a
19 specialized health care service plan, an insurer licensed under
20 the Insurance Code to provide disability insurance that covers
21 hospital, medical, or surgical benefits, automobile insurance,
22 workers' compensation insurance, or a self-insured employer
23 that is responsible to pay for health care services provided to
24 beneficiaries. "Payor" also means only those entities that
25 provide coverage for hospital, medical, or surgical benefits that
26 are not regulated under this code, the Insurance Code, or the
27 Labor Code.

28 (6) "Payor summary" means a written summary that includes
29 the payor's name, the type of plan, including, but not limited to,
30 a group health plan, an automobile insurance plan, and a
31 workers' compensation insurance plan, and the specific
32 practices, if any, the payor utilizes to actively encourage a
33 payor's beneficiaries to use the list of contracted providers when
34 obtaining medical care and the identity and telephone number
35 for the individual or office responsible for handling provider
36 reimbursement. The payor summary shall clearly identify each
37 payor that does not actively encourage its beneficiaries to do so.
38 The payor summary must be set forth within a box outlined in
39 black and in a format that provides the opportunity for the
40 provider to affirmatively opt in writing to allow or decline the

1 *sale, transfer, lease, or conveyance of the provider's name and*
 2 *contracted rates with respect to each payor on the summary,*
 3 *through check marks or any other clearly identifiable*
 4 *mechanism, and, to the extent the provider has already made this*
 5 *election, clearly discloses each such election that the provider*
 6 *has made. The payor summary shall be signed by the provider.*

7 (7) "Provider" means any of the following:

8 (A) A person licensed or certified pursuant to this division.

9 (B) A person licensed pursuant to the Chiropractic Initiative
 10 Act or the Osteopathic Initiative Act.

11 (C) A person licensed pursuant to Chapter 2.5 (commencing
 12 with Section 1440) of Division 2 of the Health and Safety Code.

13 (D) A clinic, health dispensary, or health facility licensed
 14 pursuant to Division 2 (commencing with Section 1200) of the
 15 Health and Safety Code.

16 (E) Any entity exempt from licensure pursuant to Section 1206
 17 of the Health and Safety Code.

18 (g) This section shall become operative July 1, 2006.

19 SEC. 8. Section 10178.3 of the Insurance Code is amended to
 20 read:

21 10178.3. (a) In order to prevent the improper selling, leasing,
 22 or transferring of a health care provider's contract, it is the intent
 23 of the Legislature that every arrangement that results in a payor
 24 paying a health care provider a reduced rate for health care
 25 services based on the health care provider's participation in a
 26 network or panel shall be disclosed to the provider in advance
 27 and that the payor shall actively encourage beneficiaries to use
 28 the network, unless the health care provider agrees to provide
 29 discounts without that active encouragement.

30 (b) Beginning July 1, 2000, every contracting agent that sells,
 31 leases, assigns, transfers, or conveys its list of contracted health
 32 care providers and their contracted reimbursement rates to a
 33 payor, as defined in subparagraph (A) of paragraph (3) of
 34 subdivision (d), or another contracting agent shall, upon entering
 35 or renewing a provider contract, do all of the following:

36 (1) Disclose whether the list of contracted providers may be
 37 sold, leased, transferred, or conveyed to other payors or other
 38 contracting agents, and specify whether those payors or
 39 contracting agents include workers' compensation insurers or
 40 automobile insurers.

(2) Disclose what specific practices, if any, payors utilize to actively encourage a payor's beneficiaries to use the list of contracted providers when obtaining medical care that entitles a payor to claim a contracted rate. For purposes of this paragraph, a payor is deemed to have actively encouraged its beneficiaries to use the list of contracted providers if one of the following occurs:

(A) The payor's contract with subscribers or insureds offers beneficiaries direct financial incentives to use the list of contracted providers when obtaining medical care. "Financial incentives" means reduced copayments, reduced deductibles, premium discounts directly attributable to the use of a provider panel, or financial penalties directly attributable to the nonuse of a provider panel.

(B) The payor provides information to its beneficiaries, who are parties to the contract, or, in the case of workers' compensation insurance, the employer, advising them of the existence of the list of contracted providers through the use of a variety of advertising or marketing approaches that supply the names, addresses, and telephone numbers of contracted providers to beneficiaries in advance of their selection of a health care provider, which approaches may include, but are not limited to, the use of provider directories, or the use of toll-free telephone numbers or Internet Web site addresses supplied directly to every beneficiary. However, Internet Web site addresses alone shall not be deemed to satisfy the requirements of this subparagraph. Nothing in this subparagraph shall prevent contracting agents or payors from providing only listings of providers located within a reasonable geographic range of a beneficiary.

(3) Disclose whether payors to which the list of contracted providers may be sold, leased, transferred, or conveyed may be permitted to pay a provider's contracted rate without actively encouraging the payors' beneficiaries to use the list of contracted providers when obtaining medical care. Nothing in this subdivision shall be construed to require a payor to actively encourage the payor's beneficiaries to use the list of contracted providers when obtaining medical care in the case of an emergency.

(4) Disclose, upon the initial signing of a contract, and within 30 calendar days of receipt of a written request from a provider or provider panel, a payor summary of all payors currently

1 eligible to claim a provider's contracted rate due to the provider's
2 and payor's respective written agreements with any contracting
3 agent.

4 (5) Allow providers, upon the initial signing, renewal, or
5 amendment of a provider contract, to decline to be included in
6 any list of contracted providers that is sold, leased, transferred, or
7 conveyed to payors that do not actively encourage the payors'
8 beneficiaries to use the list of contracted providers when
9 obtaining medical care as described in paragraph (2). Each
10 provider's election under this paragraph shall be binding on the
11 contracting agent with which the provider has a contract and any
12 other contracting agent that buys, leases, or otherwise obtains the
13 list of contracted providers. A provider shall not be excluded
14 from any list of contracted providers that is sold, leased,
15 transferred, or conveyed to payors that actively encourage the
16 payors' beneficiaries to use the list of contracted providers when
17 obtaining medical care, based upon the provider's refusal to be
18 included on any list of contracted providers that is sold, leased,
19 transferred, or conveyed to payors that do not actively encourage
20 the payors' beneficiaries to use the list of contracted providers
21 when obtaining medical care.

22 (6) Nothing in this subdivision shall be construed to impose
23 requirements or regulations upon payors, as defined in
24 subparagraph (A) of paragraph (3) of subdivision (d).

25 (c) Beginning July 1, 2000, a payor, as defined in
26 subparagraph (B) of paragraph (3) of subdivision (d), shall do ~~all~~
27 *both* of the following:

28 (1) Provide an explanation of benefits or explanation of review
29 that identifies the name of the network that has a written
30 agreement signed by the provider whereby the payor is entitled,
31 directly or indirectly, to pay a preferred rate for the services
32 rendered.

33 (2) Demonstrate that it is entitled to pay a contracted rate
34 within 30 business days of receipt of a written request from a
35 provider who has received a claim payment from the payor. The
36 failure of a payor to make the demonstration within 30 business
37 days shall render the payor responsible for the amount that the
38 payor would have been required to pay pursuant to the
39 beneficiary's policy with the payor, which amount shall be due
40 and payable within 10 business days of receipt of written notice

1 from the provider, and shall bar the payor from taking any future
2 discounts from that provider without the provider's express
3 written consent until the payor can demonstrate to the provider
4 that it is entitled to pay a contracted rate as provided in this
5 subdivision. A payor shall be deemed to have demonstrated that
6 it is entitled to pay a contracted rate if it ~~complies with~~ *does*
7 either of the following:

8 (A) Discloses the name of the network that has a written
9 agreement with the provider whereby the provider agrees to
10 accept discounted rates, and describes the specific practices the
11 payor utilizes to comply with paragraph (2) of subdivision (b).

12 (B) Identifies the provider's written agreement with a
13 contracting agent whereby the provider agrees to be included on
14 lists of contracted providers sold, leased, transferred, or conveyed
15 to payors that do not actively encourage beneficiaries to use the
16 list of contracted providers pursuant to paragraph (5) of
17 subdivision (b).

18 (d) For the purposes of this section, the following terms have
19 the following meanings:

20 (1) "Beneficiary" means *the following*:

21 (A) For automobile insurance, those persons covered under the
22 medical payments portion of the insurance contract.

23 (B) For group or individual health services covered through a
24 health care service plan contract, including a specialized health
25 care service plan contract, or a policy of disability insurance that
26 covers hospital, medical, or surgical benefits, a subscriber, an
27 enrollee, a policyholder, or an insured.

28 (C) For workers' compensation insurance, an employee
29 seeking health care services for a work-related injury.

30 (2) "Contracting agent" means an insurer licensed under this
31 code to provide disability insurance that covers hospital, medical,
32 or surgical benefits, automobile insurance, or workers'
33 compensation insurance, while engaged, for monetary or other
34 consideration, in the act of selling, leasing, transferring,
35 assigning, or conveying a provider or provider panel to provide
36 health care services to beneficiaries.

37 (3) (A) For the purposes of subdivision (b), "payor" means a
38 health care service plan, including a specialized health care
39 service plan, an insurer licensed under this code to provide
40 disability insurance that covers hospital, medical, or surgical

benefits, automobile insurance, or workers' compensation insurance, or a self-insured employer that is responsible to pay for health care services provided to beneficiaries.

(B) For the purposes of subdivision (c), "payor" means only an insurer licensed under this code to provide disability insurance that covers hospital, medical, or surgical benefits, or automobile insurance, if that insurer is responsible to pay for health care services provided to beneficiaries.

(4) "Payor summary" means a written summary that includes the payor's name and the type of plan, including, but not limited to, a group health plan, an automobile insurance plan, and a workers' compensation insurance plan.

(5) "Provider" means any of the following:

(A) Any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

(B) Any person licensed pursuant to the Chiropractic Initiative Act or the Osteopathic Initiative Act.

(C) Any person licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code.

(D) A clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(E) Any entity exempt from licensure pursuant to Section 1206 of the Health and Safety Code.

(e) This section shall become ~~operative on July 1, 2000~~ *inoperative on July 1, 2006, and as of January 1, 2007, is repeated, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.*

SEC. 9. Section 10178.3 is added to the Insurance Code, to read:

10178.3. (a) In order to ensure that providers are able to deliver high quality care to their patients and are able to manage their practices and that fair business practices are in place to provide a more competitive and properly functioning health care delivery system, it is the intent of the Legislature to prevent the unfair selling, leasing, or transferring of a health care provider's contract. It is further the intent of the Legislature that no health care provider shall be paid a discounted rate for health care

1 services based on that provider's participation in a network or
2 panel unless and until the health care provider has voluntarily
3 agreed in writing, in advance, to the discount with respect to
4 each payor that claims it.

5 (b) Beginning July 1, 2006, no contracting agent may sell,
6 lease, assign, transfer, or convey its list of contracted health care
7 providers and their contracted reimbursement rates to another
8 payor, as defined in paragraph (5) of subdivision (g), and any
9 such transaction shall be void, unlawful and unenforceable
10 unless all of the following conditions are met:

11 (1) The contracting agent has a direct contract signed by the
12 provider that meets the following requirements:

13 (A) Contains model language adopted by the Department of
14 Insurance and the Department of Managed Health Care through
15 emergency regulations setting forth the rights of the provider
16 under this section.

17 (B) Applies only to a single, as opposed to materially different,
18 product or line of business, and discloses the complete fee
19 schedule applicable to that product or line of business.

20 (C) Only authorizes the sale, lease, transfer, assignment or
21 conveyance of the provider's name and contracted rates to the
22 extent the provider specifically exercises the option affirmatively
23 in writing to allow his or her name and contracted
24 reimbursement rates to be included on the list of contracted
25 providers that may be sold, leased, transferred, or conveyed to
26 that payor. The written affirmative option to be exercised
27 pursuant to this section shall only be accomplished through a
28 separate document, on the payor summary, or in a separate
29 section in the contract itself, within a box outlined in black, and
30 in a format that enables the provider to affirmatively opt in
31 writing, for each potential payor, whether the provider's name
32 and contracted rate may be sold, leased, transferred or conveyed
33 to that payor through check marks or any other clearly
34 identifiable mechanism. To be an effective authorization, the
35 separate section, document or payor summary shall be signed by
36 the provider. The provider's signature on the contract as a whole
37 does not satisfy this requirement.

38 (D) Discloses what specific practices, if any, payors utilize to
39 actively encourage a payor's beneficiaries to use the list of

1 *contracted providers when obtaining medical care that entitles a*
2 *payor to claim a contracted rate.*

3 *(E) Clearly discloses whether the contracting agent intends to*
4 *sell, transfer, lease, assign, or convey the list of contracted*
5 *providers to any payor that does not actively encourage a*
6 *payor's beneficiaries to use the list of contracted providers when*
7 *obtaining medical care. Nothing in this subdivision shall be*
8 *construed to require a payor to actively encourage the payor's*
9 *beneficiaries to use the list of contracted providers when*
10 *obtaining medical care in the case of an emergency.*

11 *(F) Allows the provider to terminate his or her authorization*
12 *with respect to each payor that has access to the provider's name*
13 *and contracted reimbursement rate on 30 days' written notice.*

14 *(G) Discloses all benefits and services the contracting agent*
15 *will provide to both the provider and payor.*

16 *(H) Discloses any fees or other remuneration the contracting*
17 *agent may receive as a result of the sale, lease, assignment,*
18 *transfer or conveyance of the list of contracted health care*
19 *providers.*

20 *(2) A contracting agent that obtains a provider's power of*
21 *attorney shall not transfer that power of attorney to another*
22 *contracting agent.*

23 *(3) The contracting agent discloses, prior to the initial signing*
24 *of the contract, a payor summary of all payors that seek to be*
25 *eligible to claim a provider's contracted rate if the provider*
26 *affirmatively opts in its written agreement with the contracting*
27 *agent to allow his or her name and contracted reimbursement*
28 *rate to be sold, leased, transferred, or conveyed to that payor.*

29 *(4) The contracting agent discloses the provider's current*
30 *payor summary at least annually, and within 30 calendar days of*
31 *receipt of a written request from a provider.*

32 *(5) The contracting agent discloses by registered or certified*
33 *mail a payor summary of any additional payors that seek to be*
34 *eligible to claim a provider's contracted rate due to the*
35 *provider's written agreement with the contracting agent.*

36 *(6) The contracting agent does not transfer, sell, assign, lease,*
37 *or convey the list of contracted providers to any entity that is not*
38 *a payor, or include on the list any provider that has not*
39 *affirmatively agreed in writing to specifically authorize that*

1 payor to have access to the provider's name and contracted
2 reimbursement rate.

3 (7) The contracting agent does not allow the payor to transfer,
4 sell, assign, lease or convey the list of contracted providers to
5 any other payor or entity.

6 (8) The contracting agent requires those payors that are
7 eligible to claim a provider's contracted rate to cease claiming
8 entitlement to that rate upon termination of the provider's
9 underlying contract, or termination of the provider's
10 authorization to allow that payor to continue to have access to
11 the provider's name and contracted reimbursement rate.

12 (9) The contracting agent provides to the payor, upon a
13 payor's request where its entitlement to a discount is being
14 challenged, a copy of the agreement whereby the provider
15 affirmatively agreed in writing to specifically authorize that
16 payor to have access to that provider's name and contracted
17 reimbursement rate.

18 (10) The activity does not violate any other provision of law.

19 (11) The contracting agent may only receive access fees or
20 other remuneration for the sale, lease, transfer, or conveyance of
21 a provider's name and contracted rate as long as the list of
22 contracted providers is sold, transferred, leased, or conveyed to
23 a payor that actively encourages a payor's beneficiaries to use
24 the list of contracted providers when obtaining medical care.

25 (c) A provider shall be free to allow or decline the sale,
26 leasing, transfer, or conveyance of the provider's name and
27 contracted reimbursement rate with respect to each potential
28 payor without penalty, sanction, or retaliation of any kind,
29 including exclusion from the contracting agent's network.

30 (d) No payor shall be eligible to claim a provider's contracted
31 rate unless the payor's name has been identified on the payor
32 summary provided by the contracting agent and the provider has
33 affirmatively opted in writing to allow that payor to use that rate.

34 (e) Beginning July 1, 2006, a payor, as defined in paragraph
35 (5) of subdivision (g), that claims eligibility to a provider's
36 contracted rate shall do all of the following:

37 (1) Include on the explanation of benefits, remittance advice,
38 and any other explanation of review the identity of the
39 contracting agent through which the discount is claimed, as well
40 as the names and telephone numbers of the individual or unit

1 responsible for provider contracting for the contracting agent
2 identified on the patient's insurance card that has a written
3 agreement signed by the provider who submitted the claim
4 whereby the payor is directly entitled to pay a preferred rate for
5 the services rendered.

6 (2) Demonstrate that it is entitled to pay a contracted rate
7 within 30 business days of receipt of a written request from a
8 provider who has received a claim payment from the payor. A
9 payor can initially determine such entitlement where it provides
10 all of the following:

11 (A) Documentation of the name of the contracting agent and
12 telephone number of the individual or unit responsible for
13 provider contracting that has the written agreement signed by the
14 provider whereby the provider affirmatively opted to accept
15 discounted rates from the payor in question to be furnished to
16 that provider.

17 (B) Documentation that the contract was not sold, leased,
18 transferred, assigned, or conveyed to a payor for a product or
19 business line that is materially different from that to which the
20 underlying contract applies as it relates to increased workload or
21 other responsibilities imposed or as it relates to decreased
22 benefits conferred on the provider.

23 (C) Documentation that the patient to whom the services were
24 provided was covered by the product or business line with
25 respect to which the provider agreed to authorize discounts.

26 (D) Documentation that the patient was covered by an entity
27 authorized to claim a discount.

28 (E) Documentation that the underlying contract is with a
29 provider that has the same tax or employer identification number
30 as that of the provider's practice that submitted the claim at
31 issue. The failure of a payor to make the demonstration within 30
32 business days shall render the payor responsible for the amount
33 that the payor would have been required to pay pursuant to the
34 contract between the payor and the beneficiary, which shall be
35 due and payable within 10 business days of receipt of written
36 notice from the provider, and shall bar the payor from taking any
37 future discounts from that provider without the provider's
38 express written consent until the payor can demonstrate to the
39 provider that it is entitled to pay a contracted rate as provided in
40 this paragraph.

1 (f) A payor's initial determination that it is entitled to pay a
2 contracted rate is deemed refuted where the provider provides
3 any of the following:

4 (1) Documentation that the provider opted not to be on the list
5 of contracted providers at issue.

6 (2) Documentation that the provider terminated the underlying
7 contract.

8 (3) Documentation that the contract was sold, leased,
9 transferred, assigned or conveyed to a payor for a product or
10 business line that is materially different from that to which the
11 underlying contract applies as it relates to increased workload or
12 other responsibilities imposed or as it relates to decreased
13 benefits conferred on the provider.

14 (4) Documentation that the patient was not covered by an
15 entity authorized to claim a discount.

16 (5) Documentation that the underlying contract is with a
17 provider that has a different tax or employer identification
18 number than that of the provider's practice that submitted the
19 claim at issue.

20 (g) For the purposes of this section, the following terms have
21 the following meanings:

22 (1) "Actively encouraged its beneficiaries to use the list of
23 contracted providers" means either of the following
24 requirements are met:

25 (A) The payor's contract with subscribers or insureds offers
26 beneficiaries direct financial incentives to use the list of
27 contracted providers when obtaining medical care. "Financial
28 incentives" means reduced copayments, reduced deductibles,
29 premium discounts directly attributable to the use of a provider
30 panel, or financial penalties directly attributable to the nonuse of
31 a provider panel.

32 (B) The payor provides information directly to its beneficiaries
33 advising them of the existence of the list of contracted providers
34 through the use of a variety of advertising or marketing
35 approaches that supply the names, addresses, and telephone
36 numbers of contracted providers to beneficiaries in advance of
37 their selection of a health care provider, which approaches may
38 include, but are not limited to, the use of provider directories, or
39 the use of toll-free telephone numbers or Internet Web site
40 addresses supplied directly to every beneficiary. However,

Internet Web site addresses alone shall not be deemed to satisfy the requirements of this subparagraph. Nothing in this subparagraph shall prevent contracting agents or payors from providing only listings of providers located within a reasonable geographic range of a beneficiary.

(2) "Beneficiary" means the following:

(A) For workers' compensation insurance, an employee seeking health care services for a work-related injury.

(B) For automobile insurance, those persons covered under the medical payments portion of the insurance contract.

(C) For group or individual health services covered through a health care service plan contract, including a specialized health care service plan contract, or a policy of disability insurance that covers hospital, medical, or surgical benefits, a subscriber, an enrollee, a policyholder, or an insured.

(3) "Contracting agent" means an insurer licensed under this code to provide disability insurance that covers hospital, medical, or surgical benefits, automobile insurance, or workers' compensation insurance, or any other entity while engaged, for monetary or other consideration, in the act of selling, leasing, transferring, assigning, or conveying a provider or provider panel to provide health care services to beneficiaries. A contracting agent shall not include either of the following:

(A) A group of health care providers organized as a partnership or professional corporation that contracts with only one health care service plan to provide or arrange for the provision of health care services to that plan's members.

(B) A hospital corporation that has an identical board of directors with a health plan that exclusively contracts with the group of providers described in subparagraph (A) to provide professional medical services to its enrollees.

(4) "Materially different" means a network, product, or business line that a reasonable provider would attach importance to in determining whether to participate in it, including, but not limited to, in addition to the fee schedule amount, the types of services to be provided, claims processing rules, utilization review procedures, and patient collection processes.

(5) "Payor" means a health care service plan, including a specialized health care service plan, an insurer licensed under

1 *this code to provide disability insurance that covers hospital,*
2 *medical, or surgical benefits, automobile insurance, workers’*
3 *compensation insurance, or a self-insured employer that is*
4 *responsible to pay for health care services provided to*
5 *beneficiaries. “Payor” also means only those entities that*
6 *provide coverage for hospital, medical, or surgical benefits that*
7 *are not regulated under the Health and Safety Code, this code, or*
8 *the Labor Code.*

9 (6) *“Payor summary” means a written summary that includes*
10 *the payor’s name, the type of plan, including, but not limited to,*
11 *a group health plan, an automobile insurance plan, and a*
12 *workers’ compensation insurance plan, and the specific*
13 *practices, if any, the payor utilizes to actively encourage a*
14 *payor’s beneficiaries to use the list of contracted providers when*
15 *obtaining medical care and the identity and telephone number*
16 *for the individual or office responsible for handling provider*
17 *reimbursement. The payor summary shall clearly identify each*
18 *payor that does not actively encourage its beneficiaries to do so.*
19 *The payor summary must be set forth within a box outlined in*
20 *black and in a format that provides the opportunity for the*
21 *provider to affirmatively opt in writing to allow or decline the*
22 *sale, transfer, lease, or conveyance of the provider’s name and*
23 *contracted rates with respect to each payor on the summary,*
24 *through check marks or any other clearly identifiable*
25 *mechanism, and, to the extent the provider has already made this*
26 *election, clearly discloses each such election that the provider*
27 *has made. The payor summary shall be signed by the provider.*

28 (7) *“Provider” means any of the following:*

29 (A) *A person licensed or certified pursuant to this division.*

30 (B) *A person licensed pursuant to the Chiropractic Initiative*
31 *Act or the Osteopathic Initiative Act.*

32 (C) *A person licensed pursuant to Chapter 2.5 (commencing*
33 *with Section 1440) of Division 2 of the Health and Safety Code.*

34 (D) *A clinic, health dispensary, or health facility licensed*
35 *pursuant to Division 2 (commencing with Section 1200) of the*
36 *Health and Safety Code.*

37 (E) *Any entity exempt from licensure pursuant to Section 1206*
38 *of the Health and Safety Code.*

39 (g) *This section shall become operative July 1, 2006.*

1 *SEC. 10. Section 10178.4 of the Insurance Code is amended*
2 *to read:*

3 10178.4. (a) When a contracting agent sells, leases, or
4 transfers a health provider's contract to a payor, the rights and
5 obligations of the provider shall be governed by the underlying
6 contract between the health care provider and the contracting
7 agent.

8 (b) *Notwithstanding any other provision of law, the underlying*
9 *contract shall not obligate a provider to participate in materially*
10 *different networks, products, or business lines, nor authorize, or*
11 *otherwise require the provider to consent to the sale, lease,*
12 *transfer, assignment or conveyance of the contracted list of*
13 *providers to any network, product, or business line that is*
14 *materially different from that to which the underlying contract*
15 *applies, either as it relates to increased workload or other*
16 *responsibilities imposed on the provider or as it relates to any*
17 *decreased benefits conferred on the provider. "Materially*
18 *different" for the purposes of this section means a network,*
19 *product, or business line that a reasonable provider would attach*
20 *importance to in determining whether to participate in it,*
21 *including, but not limited to, in addition to the fee schedule*
22 *amount, the types of services to be provided, claims processing*
23 *and payment rules, utilization review procedures, or patient*
24 *collection processes.*

25 (c) For purposes of this section, the following terms shall have
26 the following meanings:

27 (1) "Contracting agent" has the meaning set forth in ~~paragraph~~
28 ~~(2) of subdivision (d) of~~ Section 10178.3.

29 (2) "Payor" has the meaning set forth in ~~paragraph (3) of~~
30 ~~subdivision (d) of~~ Section 10178.3.

31 *SEC. 11. Section 4609 of the Labor Code is amended to read:*

32 4609. (a) In order to prevent the improper selling, leasing, or
33 transferring of a health care provider's contract, it is the intent of
34 the Legislature that every arrangement that results in any payor
35 paying a health care provider a reduced rate for health care
36 services based on the health care provider's participation in a
37 network or panel shall be disclosed by the contracting agent to
38 the provider in advance and shall actively encourage employees
39 to use the network, unless the health care provider agrees to
40 provide discounts without that active encouragement.

(b) Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a payor, as defined in subparagraph (A) of paragraph (3) of subdivision (d), or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:

(1) Disclose whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or other contracting agents, and specify whether those payors or contracting agents include workers' compensation insurers or automobile insurers.

(2) Disclose what specific practices, if any, payors utilize to actively encourage employees to use the list of contracted providers when obtaining medical care that entitles a payor to claim a contracted rate. For purposes of this paragraph, a payor is deemed to have actively encouraged employees to use the list of contracted providers if the employer provides information directly to employees during the period the employer has medical control advising them of the existence of the list of contracted providers through the use of a variety of advertising or marketing approaches that supply the names, addresses, and telephone numbers of contracted providers to employees; or in advance of a workplace injury, or upon notice of an injury or claim by an employee, the approaches may include, but are not limited to, the use of provider directories, the use of a list of all contracted providers in an area geographically accessible to the posting site, the use of wall cards that direct employees to a readily accessible listing of those providers at the same location as the wall cards, the use of wall cards that direct employees to a toll-free telephone number or Internet Web site address, or the use of toll-free telephone numbers or Internet Web site addresses supplied directly during the period the employer has medical control. However, Internet Web site addresses alone shall not be deemed to satisfy the requirements of this paragraph. Nothing in this paragraph shall prevent contracting agents or payors from providing only listings of providers located within a reasonable geographic range of an employee. A payor who otherwise meets the requirements of this paragraph is deemed to have met the requirements of this paragraph regardless of the employer's

1 ability to control medical treatment pursuant to Sections 4600
2 and 4600.3.

3 (3) Disclose whether payors to which the list of contracted
4 providers may be sold, leased, transferred, or conveyed may be
5 permitted to pay a provider's contracted rate without actively
6 encouraging the employees to use the list of contracted providers
7 when obtaining medical care. Nothing in this subdivision shall be
8 construed to require a payor to actively encourage the employees
9 to use the list of contracted providers when obtaining medical
10 care in the case of an emergency.

11 (4) Disclose, upon the initial signing of a contract, and within
12 15 business days of receipt of a written request from a provider
13 or provider panel, a payor summary of all payors currently
14 eligible to claim a provider's contracted rate due to the provider's
15 and payor's respective written agreements with any contracting
16 agent.

17 (5) Allow providers, upon the initial signing, renewal, or
18 amendment of a provider contract, to decline to be included in
19 any list of contracted providers that is sold, leased, transferred, or
20 conveyed to payors that do not actively encourage the employees
21 to use the list of contracted providers when obtaining medical
22 care as described in paragraph (2). Each provider's election under
23 this paragraph shall be binding on the contracting agent with
24 which the provider has the contract and any other contracting
25 agent that buys, leases, or otherwise obtains the list of contracted
26 providers.

27 A provider shall not be excluded from any list of contracted
28 providers that is sold, leased, transferred, or conveyed to payors
29 that actively encourage the employees to use the list of
30 contracted providers when obtaining medical care, based upon
31 the provider's refusal to be included on any list of contracted
32 providers that is sold, leased, transferred, or conveyed to payors
33 that do not actively encourage the employees to use the list of
34 contracted providers when obtaining medical care.

35 (6) If the payor's explanation of benefits or explanation of
36 review does not identify the name of the network that has a
37 written agreement signed by the provider whereby the payor is
38 entitled, directly or indirectly, to pay a preferred rate for the
39 services rendered, the contracting agent shall do the following:

1 (A) Maintain a Web site that is accessible to all contracted
2 providers and updated at least quarterly and maintain a toll-free
3 telephone number accessible to all contracted providers whereby
4 providers may access payor summary information.

5 (B) Disclose through the use of an Internet Web site, a
6 toll-free telephone number, or through a delivery or mail service
7 to its contracted providers, within 30 days, any sale, lease
8 assignment, transfer or conveyance of the contracted
9 reimbursement rates to another contracting agent or payor.

10 (7) Nothing in this subdivision shall be construed to impose
11 requirements or regulations upon payors, as defined in
12 subparagraph (A) of paragraph (3) of subdivision (d).

13 (c) Beginning July 1, 2000, a payor, as defined in
14 subparagraph (B) of paragraph (3) of subdivision (d), shall do all
15 of the following:

16 (1) Provide an explanation of benefits or explanation of review
17 that identifies the name of the network with which the payor has
18 an agreement that entitles them to pay a preferred rate for the
19 services rendered.

20 (2) Demonstrate that it is entitled to pay a contracted rate
21 within 30 business days of receipt of a written request from a
22 provider who has received a claim payment from the payor. The
23 provider shall include in the request a statement explaining why
24 the payment is not at the correct contracted rate for the services
25 provided. The failure of the provider to include a statement shall
26 relieve the payor from the responsibility of demonstrating that it
27 is entitled to pay the disputed contracted rate. The failure of a
28 payor to make the demonstration to a properly documented
29 request of the provider within 30 business days shall render the
30 payor responsible for the lesser of the provider's actual fee or, as
31 applicable, any fee schedule pursuant to this division, which
32 amount shall be due and payable within 10 days of receipt of
33 written notice from the provider, and shall bar the payor from
34 taking any future discounts from that provider without the
35 provider's express written consent until the payor can
36 demonstrate to the provider that it is entitled to pay a contracted
37 rate as provided in this subdivision. A payor shall be deemed to
38 have demonstrated that it is entitled to pay a contracted rate if it
39 complies with either of the following:

1 (A) Describes the specific practices the payor utilizes to
2 comply with paragraph (2) of subdivision (b), and demonstrates
3 compliance with paragraph (1).

4 (B) Identifies the contracting agent with whom the payor has a
5 written agreement whereby the payor is not required to actively
6 encourage employees to use the list of contracted providers
7 pursuant to paragraph (5) of subdivision (b).

8 (d) For the purposes of this section, the following terms have
9 the following meanings:

10 (1) "Contracting agent" means an insurer licensed under the
11 Insurance Code to provide workers' compensation insurance, a
12 health care service plan, including a specialized health care
13 service plan, a preferred provider organization, or a self-insured
14 employer, while engaged, for monetary or other consideration, in
15 the act of selling, leasing, transferring, assigning, or conveying a
16 provider or provider panel to provide health care services to
17 employees for work-related injuries.

18 (2) "Employee" means a person entitled to seek health care
19 services for a work-related injury.

20 (3) (A) For the purposes of subdivision (b), "payor" means a
21 health care service plan, including a specialized health care
22 service plan, an insurer licensed under the Insurance Code to
23 provide disability insurance that covers hospital, medical, or
24 surgical benefits, automobile insurance, or workers'
25 compensation insurance, or a self-insured employer that is
26 responsible to pay for health care services provided to
27 beneficiaries.

28 (B) For the purposes of subdivision (c), "payor" means an
29 insurer licensed under the Insurance Code to provide workers'
30 compensation insurance, a self-insured employer, a third-party
31 administrator or trust, or any other third party that is responsible
32 to pay health care services provided to employees for
33 work-related injuries, or an agent of an entity included in this
34 definition.

35 (4) "Payor summary" means a written summary that includes
36 the payor's name and the type of plan, including, but not limited
37 to, a group health plan, an automobile insurance plan, and a
38 workers' compensation insurance plan.

39 (5) "Provider" means any of the following:

1 (A) Any person licensed or certified pursuant to Division 2
2 (commencing with Section 500) of the Business and Professions
3 Code.

4 (B) Any person licensed pursuant to the Chiropractic Initiative
5 Act or the Osteopathic Initiative Act.

6 (C) Any person licensed pursuant to Chapter 2.5 (commencing
7 with Section 1440) of Division 2 of the Health and Safety Code.

8 (D) A clinic, health dispensary, or health facility licensed
9 pursuant to Division 2 (commencing with Section 1200) of the
10 Health and Safety Code.

11 (E) Any entity exempt from licensure pursuant to Section
12 1206 of the Health and Safety Code.

13 (e) This section shall become ~~operative on July 1, 2000~~
14 *inoperative on July 1, 2006, and as of January 1, 2007, is*
15 *repealed, unless a later enacted statute that is enacted before*
16 *January 1, 2007, deletes or extends the dates on which it*
17 *becomes inoperative and is repealed.*

18 SEC. 12. Section 4609 is added to the Labor Code, to read:

19 4609. (a) *In order to ensure that providers are able to*
20 *deliver high quality care to their patients and are able to manage*
21 *their practices and that fair business practices are in place to*
22 *provide a more competitive and properly functioning health care*
23 *delivery system, it is the intent of the Legislature to prevent the*
24 *unfair selling, leasing, or transferring of a health care provider's*
25 *contract. It is further the intent of the Legislature that no health*
26 *care provider shall be paid a discounted rate for health care*
27 *services based on that provider's participation in a network or*
28 *panel unless and until the health care provider has voluntarily*
29 *agreed in writing, in advance, to the discount with respect to*
30 *each payor that claims it.*

31 (b) *Beginning July 1, 2006, no contracting agent may sell,*
32 *lease, assign, transfer, or convey its list of contracted health care*
33 *providers and their contracted reimbursement rates to another*
34 *payor, as defined in paragraph (5) of subdivision (g), and any*
35 *such transaction shall be void, unlawful and unenforceable*
36 *unless all of the following conditions are met:*

37 (1) *The contracting agent has a direct contract signed by the*
38 *provider that meets the following requirements:*

39 (A) *Contains model language adopted by the Department of*
40 *Insurance and the Department of Managed Health Care through*

1 *emergency regulations setting forth the rights of the provider*
2 *under this section.*

3 *(B) Applies only to a single, as opposed to materially different,*
4 *product or line of business, and discloses the complete fee*
5 *schedule applicable to that product or line of business.*

6 *(C) Only authorizes the sale, lease, transfer, assignment or*
7 *conveyance of the provider's name and contracted rates to the*
8 *extent the provider specifically exercises the option affirmatively*
9 *in writing to allow his or her name and contracted*
10 *reimbursement rates to be included on the list of contracted*
11 *providers that may be sold, leased, transferred, or conveyed to*
12 *that payor. The written affirmative option to be exercised*
13 *pursuant to this section shall only be accomplished through a*
14 *separate document, on the payor summary, or in a separate*
15 *section in the contract itself, within a box outlined in black, and*
16 *in a format that enables the provider to affirmatively opt in*
17 *writing, for each potential payor, whether the provider's name*
18 *and contracted rate may be sold, leased, transferred or conveyed*
19 *to that payor through check marks or any other clearly*
20 *identifiable mechanism. To be an effective authorization, the*
21 *separate section, document or payor summary shall be signed by*
22 *the provider. The provider's signature on the contract as a whole*
23 *does not satisfy this requirement.*

24 *(D) Discloses what specific practices, if any, payors utilize to*
25 *actively encourage a payor's beneficiaries to use the list of*
26 *contracted providers when obtaining medical care that entitles a*
27 *payor to claim a contracted rate.*

28 *(E) Clearly discloses whether the contracting agent intends to*
29 *sell, transfer, lease, assign, or convey the list of contracted*
30 *providers to any payor that does not actively encourage a*
31 *payor's beneficiaries to use the list of contracted providers when*
32 *obtaining medical care. Nothing in this subdivision shall be*
33 *construed to require a payor to actively encourage the payor's*
34 *beneficiaries to use the list of contracted providers when*
35 *obtaining medical care in the case of an emergency.*

36 *(F) Allows the provider to terminate his or her authorization*
37 *with respect to each payor that has access to the provider's name*
38 *and contracted reimbursement rate on 30 days' written notice.*

39 *(G) Discloses all benefits and services the contracting agent*
40 *will provide to both the provider and payor.*

1 (H) Discloses any fees or other remuneration the contracting
2 agent may receive as a result of the sale, lease, assignment,
3 transfer or conveyance of the list of contracted health care
4 providers.

5 (2) A contracting agent that obtains a provider's power of
6 attorney shall not transfer that power of attorney to another
7 contracting agent.

8 (3) The contracting agent discloses, prior to the initial signing
9 of the contract, a payor summary of all payors that seek to be
10 eligible to claim a provider's contracted rate if the provider
11 affirmatively opts in its written agreement with the contracting
12 agent to allow his or her name and contracted reimbursement
13 rate to be sold, leased, transferred, or conveyed to that payor.

14 (4) The contracting agent discloses the provider's current
15 payor summary at least annually, and within 30 calendar days of
16 receipt of a written request from a provider.

17 (5) The contracting agent discloses by registered or certified
18 mail a payor summary of any additional payors that seek to be
19 eligible to claim a provider's contracted rate due to the
20 provider's written agreement with the contracting agent.

21 (6) The contracting agent does not transfer, sell, assign, lease,
22 or convey the list of contracted providers to any entity that is not
23 a payor, or include on the list any provider that has not
24 affirmatively agreed in writing to specifically authorize that
25 payor to have access to the provider's name and contracted
26 reimbursement rate.

27 (7) The contracting agent does not allow the payor to transfer,
28 sell, assign, lease or convey the list of contracted providers to
29 any other payor or entity.

30 (8) The contracting agent requires those payors that are
31 eligible to claim a provider's contracted rate to cease claiming
32 entitlement to that rate upon termination of the provider's
33 underlying contract, or termination of the provider's
34 authorization to allow that payor to continue to have access to
35 the provider's name and contracted reimbursement rate.

36 (9) The contracting agent provides to the payor, upon a
37 payor's request where its entitlement to a discount is being
38 challenged, a copy of the agreement whereby the provider
39 affirmatively agreed in writing to specifically authorize that

1 payor to have access to that provider's name and contracted
2 reimbursement rate.

3 (10) The activity does not violate any other provision of law.

4 (11) The contracting agent may only receive access fees or
5 other remuneration for the sale, lease, transfer, or conveyance of
6 a provider's name and contracted rate as long as the list of
7 contracted providers is sold, transferred, leased or conveyed to a
8 payor that actively encourages a payor's beneficiaries to use the
9 list of contracted providers when obtaining medical care.

10 (c) A provider shall be free to allow or decline the sale,
11 leasing, transfer, or conveyance of the provider's name and
12 contracted reimbursement rate with respect to each potential
13 payor, without penalty, sanction, or retaliation of any kind,
14 including exclusion from the contracting agent's network.

15 (d) No payor shall be eligible to claim a provider's contracted
16 rate unless the payor's name has been identified on the payor
17 summary provided by the contracting agent and the provider has
18 affirmatively opted in writing to allow that payor to use that rate.

19 (e) Beginning July 1, 2006, a payor, as defined in paragraph
20 (5) of subdivision (g), that claims eligibility to a provider's
21 contracted rate shall do all of the following:

22 (1) Include on the explanation of benefits, remittance advice,
23 and any other explanation of review the identity of the
24 contracting agent through which the discount is claimed, as well
25 as the names and telephone numbers of the individual or unit
26 responsible for provider contracting for the contracting agent
27 identified on the patient's insurance card that has a written
28 agreement signed by the provider who submitted the claim
29 whereby the payor is directly entitled to pay a preferred rate for
30 the services rendered.

31 (2) Demonstrate that it is entitled to pay a contracted rate
32 within 30 business days of receipt of a written request from a
33 provider who has received a claim payment from the payor. A
34 payor can initially determine such entitlement where it provides
35 all of the following:

36 (A) Documentation of the name of the contracting agent and
37 telephone number of the individual or unit responsible for
38 provider contracting that has the written agreement signed by the
39 provider whereby the provider affirmatively opted to accept

1 *discounted rates from the payor in question to be furnished to*
2 *that provider.*

3 *(B) Documentation that the contract was not sold, leased,*
4 *transferred, assigned or conveyed to a payor for a product or*
5 *business line that is materially different from that to which the*
6 *underlying contract applies as it relates to increased workload or*
7 *other responsibilities imposed or as it relates to decreased*
8 *benefits conferred on the provider.*

9 *(C) Documentation that the patient to whom the services were*
10 *provided was covered by the product or business line with*
11 *respect to which the provider agreed to authorize discounts.*

12 *(D) Documentation that the patient was covered by an entity*
13 *authorized to claim a discount.*

14 *(E) Documentation that the underlying contract is with a*
15 *provider that has the same tax or employer identification number*
16 *as that of the provider's practice that submitted the claim at*
17 *issue. The failure of a payor to make the demonstration within 30*
18 *business days shall render the payor responsible for the amount*
19 *that the payor would have been required to pay pursuant to the*
20 *contract between the payor and the beneficiary, which shall be*
21 *due and payable within 10 business days of receipt of written*
22 *notice from the provider, and shall bar the payor from taking any*
23 *future discounts from that provider without the provider's*
24 *express written consent until the payor can demonstrate to the*
25 *provider that it is entitled to pay a contracted rate as provided in*
26 *this paragraph.*

27 *(f) A payor's initial determination that it is entitled to pay a*
28 *contracted rate is deemed refuted where the provider provides*
29 *any of the following:*

30 *(1) Documentation that the provider opted not to be on the list*
31 *of contracted providers at issue.*

32 *(2) Documentation that the provider terminated the underlying*
33 *contract.*

34 *(3) Documentation that the contract was sold, leased,*
35 *transferred, assigned or conveyed to a payor for a product or*
36 *business line that is materially different from that to which the*
37 *underlying contract applies as it relates to increased workload or*
38 *other responsibilities imposed or as it relates to decreased*
39 *benefits conferred on the provider.*

1 (4) Documentation that the patient was not covered by an
2 entity authorized to claim a discount.

3 (5) Documentation that the underlying contract is with a
4 provider that has a different tax or employer identification
5 number than that of the provider's practice that submitted the
6 claim at issue.

7 (g) For the purposes of this section, the following terms have
8 the following meanings:

9 (1) "Actively encouraged its beneficiaries to use the list of
10 contracted providers" means either of the following
11 requirements are met:

12 (A) The payor's contract with subscribers or insureds offers
13 beneficiaries direct financial incentives to use the list of
14 contracted providers when obtaining medical care. "Financial
15 incentives" means reduced copayments, reduced deductibles,
16 premium discounts directly attributable to the use of a provider
17 panel, or financial penalties directly attributable to the nonuse of
18 a provider panel.

19 (B) The payor provides information directly to its beneficiaries
20 advising them of the existence of the list of contracted providers
21 through the use of a variety of advertising or marketing
22 approaches that supply the names, addresses, and telephone
23 numbers of contracted providers to beneficiaries in advance of
24 their selection of a health care provider, which approaches may
25 include, but are not limited to, the use of provider directories, or
26 the use of toll-free telephone numbers or Internet Web site
27 addresses supplied directly to every beneficiary. However,
28 Internet Web site addresses alone shall not be deemed to satisfy
29 the requirements of this subparagraph. Nothing in this
30 subparagraph shall prevent contracting agents or payors from
31 providing only listings of providers located within a reasonable
32 geographic range of a beneficiary.

33 (2) "Contracting agent" means an insurer licensed under the
34 Insurance Code to provide workers' compensation insurance, a
35 health care service plan, including a specialized health care
36 service plan, a preferred provider organization, or a self-insured
37 employer, or any other entity while engaged, for monetary or
38 other consideration, in the act of selling, leasing, transferring,
39 assigning, or conveying a provider or provider panel to provide

1 health care services to employees for work-related injuries. A
2 contracting agent shall not include either of the following:

3 (A) A group of health care providers organized as a
4 partnership or professional corporation that contracts with only
5 one health care service plan to provide or arrange for the
6 provision of health care services to that plan's members.

7 (B) A hospital corporation that has an identical board of
8 directors with a health plan that exclusively contracts with the
9 group of providers described in subparagraph (A) to provide
10 professional medical services to its enrollees.

11 (3) "Employee" means a person entitled to seek health care
12 services for a work-related injury.

13 (4) "Materially different" means a network, product, or
14 business line that a reasonable provider would attach
15 importance to in determining whether to participate in it,
16 including, but not limited to, in addition to the fee schedule
17 amount, the types of services to be provided, claims processing
18 rules, utilization review procedures, or patient collection
19 processes.

20 (5) "Payor" means a health care service plan, including a
21 specialized health care service plan, an insurer licensed under
22 the Insurance Code to provide disability insurance that covers
23 hospital, medical, or surgical benefits, automobile insurance,
24 workers' compensation insurance, or a self-insured employer
25 that is responsible to pay for health care services provided to
26 beneficiaries. "Payor" also means only those entities that
27 provide coverage for hospital, medical, or surgical benefits that
28 are not regulated under the Health and Safety Code, the
29 Insurance Code, or this code.

30 (6) "Payor summary" means a written summary that includes
31 the payor's name, the type of plan, including, but not limited to,
32 a group health plan, an automobile insurance plan, and a
33 workers' compensation insurance plan, and the specific
34 practices, if any, the payor utilizes to actively encourage a
35 payor's beneficiaries to use the list of contracted providers when
36 obtaining medical care and the identity and telephone number
37 for the individual or office responsible for handling provider
38 reimbursement. The payor summary shall clearly identify each
39 payor that does not actively encourage its beneficiaries to do so.
40 The payor summary must be set forth within a box outlined in

1 *black, and in a format that provides the opportunity for the*
2 *provider to affirmatively opt in writing to allow or decline the*
3 *sale, transfer, lease, or conveyance of the provider's name and*
4 *contracted rates with respect to each payor on the summary,*
5 *through check marks or any other clearly identifiable*
6 *mechanism, and, to the extent the provider has already made this*
7 *election, clearly discloses each such election the provider has*
8 *made. The payor summary shall be signed by the provider.*

9 (7) "Provider" means any of the following:

10 (A) A person licensed or certified pursuant to this division.

11 (B) A person licensed pursuant to the Chiropractic Initiative
12 Act or the Osteopathic Initiative Act.

13 (C) A person licensed pursuant to Chapter 2.5 (commencing
14 with Section 1440) of Division 2 of the Health and Safety Code.

15 (D) A clinic, health dispensary, or health facility licensed
16 pursuant to Division 2 (commencing with Section 1200) of the
17 Health and Safety Code.

18 (E) An entity exempt from licensure pursuant to Section 1206
19 of the Health and Safety Code.

20 (h) This section shall become operative on July 1, 2006.

21 SEC. 13. Section 4609.5 is added to the Labor Code, to read:

22 4609.5. (a) When a contracting agent sells, leases, or
23 transfers a health provider's contract to a payor, the rights and
24 obligations of the provider shall be governed by the underlying
25 contract between the health care provider and the contracting
26 agent.

27 (b) Notwithstanding any other provision of law, the underlying
28 contract shall not obligate a provider to participate in materially
29 different networks, products, or business lines, nor authorize, or
30 otherwise require the provider to consent to the sale, lease,
31 transfer, assignment or conveyance of the contracted list of
32 providers to any network, product, or business line that is
33 materially different from that to which the underlying contract
34 applies, either as it relates to increased workload or other
35 responsibilities imposed on the provider or as it relates to any
36 decreased benefits conferred on the provider. "Materially
37 different" for the purposes of this section means a network,
38 product, or business line that a reasonable provider would attach
39 importance to in determining whether to participate in it,
40 including, but not limited to, in addition to the fee schedule

1 amount, the types of services to be provided, claims processing
2 and payment rules, utilization review procedures, or patient
3 collection processes.

4 (c) For purposes of this section, the following terms shall have
5 the following meanings:

6 (1) “Contracting agent” has the meaning set forth in Section
7 4609.

8 (2) “Payor” has the meaning set forth in Section 4609.

9 SEC. 14. No reimbursement is required by this act pursuant
10 to Section 6 of Article XIII B of the California Constitution
11 because the only costs that may be incurred by a local agency or
12 school district will be incurred because this act creates a new
13 crime or infraction, eliminates a crime or infraction, or changes
14 the penalty for a crime or infraction, within the meaning of
15 Section 17556 of the Government Code, or changes the definition
16 of a crime within the meaning of Section 6 of Article XIII B of the
17 California Constitution.